Nos. 17,878 and 17,879

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 17,878

GEORGE RAMSEY; LEON NUNLEY, d/b/a LEON NUNLEY COAL COMPANY; PAUL GIBBS, d/b/a PAUL GIBBS COAL COMPANY; LOIS HALL TRAVIS, Administratrix of the Estate of W. J. Travis and J. H. GRAHAM, d/b/a NINTH WEST COAL COMPANY; A & R COAL COMPANY, INC.; W. T. MORRISON and J. H. GRAHAM, d/b/a M & G COAL COMPANY; J. H. GRAHAM COAL COMPANY, INC.; W. T. MORRISON and LOIS HALL TRAVIS, Administratrix of the Estate of W. J. TRAVIS, d/b/a M & T COAL COMPANY; STEPHENSON BROTHERS COAL COMPANY, INC.; EDWARD NUNLEY, d/b/a EDWARD NUNLEY COAL COMPANY; EAST VALLEY COAL COMPANY, INC.; ELLIS WARD and LON L. VARNELL, d/b/a TRACY CITY COAL COMPANY; HENRY WILLIS FLYNN, d/b/a WILLIS FLYNN COAL COMPANY; H. W. FLYNN COAL COMPANY, INC.; HOWARD HIGGINS, d/b/a HOWARD HIGGINS COAL COMPANY; HOWARD HIGGINS COAL COMPANY, INC.; MARSHALL MEEKS,

Plaintiffs-Appellants.

v.

UNITED MINE WORKERS OF AMERICA,

Defendant-Appellee.

No. 17,879

TENNESSEE PRODUCTS AND CHEMICAL CORPORATION,

Plaintiff-Appellant.

v.

UNITED MINE WORKERS OF AMERICA,

Defendant-Appellee.

Appeals from Final Judgments of the United States District Court for the Eastern District of Tennessee, Southern Division

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Mr. Rowntree: I think we object to this as a presentation of the market price of coal at Widows Creek for each of these years. Apparently this is a cost of burned tonnage, which may go back for several years on a term contract.

The cost of the thing would relate back to a period
4338 of years before, as I understand the witness.

Mr. Rayson: Your Honor, we are introducing it or we propose to introduce this exhibit to show the changes year by year in the cost of coal burned by power systems. That is our purpose. We want to show what variations there were from year to year. I presume we can never obtain something that would show that exactly because they don't buy coal today and burn it tomorrow. There is always that element of storage involved, but I think that certainly whatever merit this objection has, and I don't think that it has any, that it could only go to the weight of the exhibit.

Mr. Rowntree: Well, may I ask, is it offered to show the price that producers of coal were receiving at the particular award made in those various years?

The Court: It could only show relatively.

Mr. Rayson: It would have some bearing on that, I would think, because, as I understand the proof in the record already shows there was a stockpile from 90 to 120 days at these plants, so it would have some bearing on the price as it varied over the years, however, the exhibit precisely stated goes to show the variation in the price of the coal burned.

Mr. Rowntree: For instance, 1956, I think it is conceded is a high year on the market at Widows Creek, it does not reflect on that sheet because the coal bought that year
4339 was burned in future years under term contracts and that high cost reflected itself in the later years, as I understand the computation of the thing.

The Court: I think that would go to what, if any, weight should be given to the exhibit, recognizing that criticism.

Mr. Rayson: I may say that the TVA reports for most years show the slight distinction in the cost of coal as well

as the cost of coal burned and if it will make counsel happy we will put those figures in.

The Witness: I think I perhaps could throw some light on this aspect of the point, if it would be helpful. If one examines the figures in the TVA Annual Reports, the years where figures are shown both for cost of coal received and cost of coal burned, you will find that there is only a small difference and the difference is pretty consistent. The difference accounts for the fact that — it is accounted for by the fact that the cost of coal burned includes one or two minor items on cost of handling and so on that are not included in the figures of cost of coal received and as far as the effect on prices from year to year, as far as carry-over and storage is concerned, this is clearly very minor from the relative changes that one sees and my purpose here was to get as nearly comparable figures as I could and the way to get the most comparable figures were to
4340 take the published information for the power industry and the figures for coal burned by TVA.

If I had taken figures for coal received by TVA, the picture would not have been significantly different.

By Mr. Rayson:

Q. Well, will you explain to us, Mr. Kampmeier, what this exhibit shows?

A. Yes. In the first place, it covers a period from 1954 to 1962, and I'd like to explain why that is the period that it covers.

1954 was the first year in which we were coming up to a fairly large quantity of coal used on the TVA system. The first year in which the system as a whole burned more than 5 million tons of coal. It was the first year in which Widows Creek burned more than one million tons of coal.

Then I continued it through 1962 because that was the last year that I felt that I was in position to speak with any competence as to any reasons that might lie behind any of the variations, because that was the last year in which I was still very closely familiar with the facts that

entered into the cost of coal on the TVA system and at Widows Creek.

Now, as to what it shows, I think that one of the most significant things that it shows is that the pattern of price,

and this is the total price paid for the coal at the
4341 plant, including the transportation, as well as the cost at the mine,, that the — well, first that the variations up and down from an average are rather small, and this applies directly to your question that you had asked me as to whether costs had varied widely or not at Widows Creek.

It will be seen not only for Widows Creek, but for the United States, that the high and the low during this period of nine years, yes, nine years, is 5 per cent up and down from the norm for the period, the average for the period. For the TVA system it is only 3 per cent up and down.

So the variation up and down from high to low is small, is modest.

Now, I grant that I am not talking here about individual contracts, of course. The individual contract may be higher. A particular purchase may be higher or lower than this, but in terms of throwing together all of the coal received in a given year, burned in a given year, rather, whether bought, whether contracted for that year or the year before, that the average variations in price in these annual averages from the average for nine years is rather small.

Secondly, I think perhaps more interesting to me, at least, is the fact that the pattern of variations is so nearly

the same in all three columns.

4342 The price, I don't think, is surprising at all, but I think it's noteworthy that the price went up for TVA and for Widows Creek when it went up for the United States generally and when it went down in the United States generally, it went down for TVA and the variations from the pattern for the United States, the variations from that pattern, when you look at the other two columns, are never more than two percentage points, except in the first year

for the TVA system as a whole, other than that year the TVA index was four points above the United States, in all other cases the figure for the TVA system or for Widows Creek in any given year is within two points of that same level on the pattern that shows up for the United States and which would be, you might say, a yardstick for comparison.

Q. What is the two points in cost per ton of coal?

A. Well, two points would be 2 per cent of the cost of coal or roughly 10 cents a ton at Widows Creek.

Q. Now, as for the national pattern of price variations, can you identify factors which influenced that pattern, can account for its variation?

A. Yes. I think that there are about four things that ought to be said about that pattern of variation in prices paid throughout the country by power systems, and before trying to explain any of them let me identify them.

One would be the effect of temporary changes in
4343 demand, temporary fluctuations in demand.

Second would be changing freight rates.

The third would be changes in the value of the dollar.

And the fourth would be improving productivity in coal mining.

Q. What do you mean by "temporary variation in demand"? Explain that factor.

A. Well, this is a case of the law of supply and demand being at work. Over a long term if demand is expanded greatly then this permits more efficient production and lower costs, so the long-term effect is one thing and that is, I think, the point I mentioned last, and I want to come to last, but in the short term it doesn't work that way. In the short term if there is a sudden surge in demand, then you have what is generally called a seller's market and prices tend to go up, or if you have a temporary drop in demand then the prices tend temporarily to go down.

Now, this doesn't persist forever, but the immediate effect, the short-term effect for a year or two, can be quite

pronounced and we see it, of course, in prices of almost anything.

Q. What about the second factor you mentioned, the changing freight rates?

A. Well, the effect of changing freight rates, of
4344 course, has to be taken into account because these are delivered costs of coal, so that when freight rates go up the delivered cost of coal goes up. When freight rates go down, the delivered cost goes down and the point about each of these factors is that not only do I refer to them as a matter of theory, but I can refer to them as a matter of practical effect.

Let me go back a moment to the effect of the temporary changes in demand. In 1954 there was a rather sharp drop in the total U. S. sales of coal to a point about 15 per cent lower than it had been the year before or than it was again the year later and this was about the lowest point that the coal sales added up to since the depression of the thirties.

Now, allowing for the fact that there is a time lag in the effect of this kind of a change in demand on price, that it takes a while for — of course, the effect on spot contracts may be immediate, tend to be, but the effect on term contracts is a little slower, you do have the time lag of some slight averaging effect here. If you allow approximately a year as to the average effect of the time lag of the effect on the market changes on new contracts and of new contracts on the average delivered prices, then it would be natural that one might expect that a low point temporary short drop in demand in '54 would be followed by a
4345 low price in '55, which they are. Now, it takes more than one swallow to make a summer.

If this were the only one instance it wouldn't prove much to me, but if we follow on through we find in '56 we had a temporary peak in demand, which was noticeable as compared to preceding and following years and in '57, in allowing a year's lag, we have a high price for coal. By '58 we had a rather definite drop again in total U. S. coal sales

to a level which then tended to persist for the next several years. So you find the price in '59 dropped to a level that tended to persist. So this pattern followed very close correlation between changes in demand and changes in price.

Now, on the freight raise during this period, there was one interval in which there were general freight rate increases that were noticeably significant, and that was from '55 to '57, and there, too, this was a period in which average delivered prices of coal to power systems went up.

After about 1958 or '9 there was a slight down trend in average freight rates, and this again tends to be consistent with this pattern of prices.

So I say I think those two factors are reflected, I think the same thing can be said about the others. I mentioned the third, I think—

Q. The value of the dollar.

4346 A. All right. The value of the dollar. During this period the wholesale price index for all commodities, and it is shown in this chart which we were looking on a little while ago, for instance, didn't change very greatly but what change there was was concentrated almost entirely in those years from '55 to '57. The rise in the solid line on that chart in the wholesale price index took place in that 2-year period, so that this was not just a rise in coal prices, this was a rise in prices generally. This was a brief flurry of inflation, you might say, from '55 to '57, so that also is consistent with this pattern.

Then finally I mentioned the effect of the increase in coal productivity and this, I think, is an important element in this picture because if it were not for that then the prices should be higher by the end of the period than at the beginning of the period because the wholesale price index was somewhat higher. There was a decline in the value of the dollar which, though not large, was several per cent and, therefore, if coal costs just as much to produce in terms of constant cost in dollars, the real cost at the end of the period as at the beginning, then in terms of actual prices,

actual dollars, the changing value of the dollar, the coal prices would be higher at the end of the period. But they weren't, they were no higher, they were a little lower, and this reflects the fact that with the shift to more and more sales of coal to the power systems—we are talking
4347 here only about sales to power systems—that the market that these power systems provided was increasingly a bulk market, which allowed the producers to supply coal in bulk and at a reduced cost, and this meant that the price of coal went down or, at best, didn't go up. Actually it went down a little bit even though prices generally were going up. Even though coal prices generally, if you take the index of all coal produced instead of coal used by power systems, coal prices went up somewhat in this period and the coal prices to power systems did not, and particularly in the case of TVA system you had a distinct downward trend during this period because of the impact of this TVA market on the ability of its suppliers to supply coal in bulk and at a low cost.

So I think each of these factors can be traced in this picture. My work causes me to deal a lot with economic questions of this sort and this to me is a very interesting picture and I think it shows that the price patterns here are entirely logical, consistent patterns that fit in with the changing economic conditions that were affecting the picture.

Mr. Rayson: Your Honor, we offer the chart entitled "Changes in Cost of Coal Burned by Power Systems" as an exhibit to Mr. Kampmeier's testimony.

The Court: Exhibit 380.

(The chart referred to above was marked D380 and received in evidence.)

4348 By Mr. Rayson:

Q. Mr. Kampmeier, did you participate in the development of the contract under which Peabody Coal Company supplies coal for the Paradise Steam Plant?

A. Yes, yes.

Q. Can you tell us whether that contract was made as a result of a TVA bid invitation?

A. Yes, it was. There were bids invited, and the Peabody Company submitted a bid in response to that invitation. The terms of that bid were not, however, wholly satisfactory to the TVA and the contract developed out of negotiations that followed the submission of that.

Q. What was TVA's purpose in issuing that invitation?

A. Well, we had been asking ourselves questions for a long time, several years, as to when the time might come when it would be the economically desirable thing to do to build one of the TVA steam plants or more at a place where it could be right at the coal and where we could keep transportation costs as low as possible or eliminate them entirely, and we had been a little by little over the years obtaining information from the various suppliers as to the available reserves. We had been making studies in connection with the States of Tennessee and Kentucky with the Bureau of Mines as to the reserves. We satisfied ourselves there were
4349 places, particularly in western Kentucky, where there were reserves available in such large quantities and within a limited area, I don't mean the reserves are limited in a small area but within any small area you could have enough coal available so that it would be possible if one could locate a plant there to minimize transportation costs, and we had been interested, we had come to the conclusion that it was the time to make a serious exploration of this sort of possibility.

We had inquired of all those companies who were known to have very large reserves as to their interest in offering a large quantity of coal and, therefore, in connection with one of our bid invitations we invited people to submit bids in very large quantities of coal they might have available for very long term in the hopes that out of this might come an opportunity to build a plant at such a mine.

Q. Did you receive many bids in response to that invitation?

A. No, it was disappointing in that sense. The only bid that was of the size and the term that we thought would be big enough to justify this kind of a plant was the offer by Peabody and it was not as — it presented a very attractive offer, but it was the only — the best one we had and provided at least a vehicle for exploring what can be done and finally did turn out to be quite satisfactory.

Q. Did you find yourself and TVA in the position of being able to negotiate with Peabody Coal Company
4350 after that bid was made?

A. Yes, because they were the low bidder, you might say, or the sole responsible bidder. We were in position to see whether it would be possible to agree on the modifications in their offer which would make it a mutually acceptable and mutually desirable basis for proceeding.

Q. Did you, in the course of your negotiations, did you agree upon something that was more attractive to TVA than the bid originally submitted by Peabody?

A. Yes; yes. Maybe the easiest way to indicate that is, as I recall, they offered coal at $3.80 a ton, which was to be a washed coal, and indicated in the bid that if it didn't need to be washed maybe some arrangements could be worked out in lieu of that and what we ended up buying was unwashed coal at $2.90 a ton, of course, very substantially less per ton. It was not as much less per million BTU as the price per ton might sound like, but it was a substantially more favorable price per million BTU than the original offer, and we also arrived at some different escalation provisions and some different quantities and schedules of quantities, as I recall. No, I guess the quantity wasn't particularly different, but the scheduling of the quantity at least was different.

Q. What did you say was the price at which you negotiated that contract finally?

4351 A. I think I said $2.90, but I think I misspoke, I think it was $2.95 per ton.

Q. All right, sir. Do you know what kind of coal that was?

A. Yes. That was a raw coal, a mixture of three different seams, as I remember it, at least two principally, it was a relatively low quality unwashed west Kentucky coal.

Q. When you offered that invitation had you already determined where you were going to build this plant?

A. No, we couldn't because we didn't know what kind of offers we might get. We had to, of course, explore various possibilities. We identified at least three rivers where we might locate the plant in order to have an adequate cooling water supply, anywhere up and down these rivers. We had in mind the relative attractiveness of various alternative locations for transportation but then we had to wait to see what kind of coal might be offered and what companies might offer coal, out of what reserves and what locations and what quantities, in order to be able to judge whether we would have a feasible basis for proceeding or not.

Q. Well, did you award the contract to Peabody, did you finally negotiate before you decided where you were going to locate the Paradise plant?

A. No, both decisions were made simultaneously, that is to say, we worked out with Peabody what could
4352 be done if the TVA Board were willing to go ahead and locate a plant there at their coal to use it, and we were meanwhile having our engineers developing further details before they knew where the coal might be, before they knew whether the coal might be available, what the construction problems and opportunities might be, and then we went to the Board with our recommendation that the contract be made and the plant be built and both decisions were made concurrently.

Q. Now, upon the construction of that plant, the construction of the Paradise plant, is there any transportation cost from the mine to the plant?

A. No. TVA has no transportation cost. The company has an average haul of maybe five miles, but that has to be included in the cost of them of delivering the coal to us, but the price that I mentioned, which I think was later reduced somewhat under the escalation provisions of the contract, that price is a delivered price into the hoppers, coal hoppers, at TVA's plant, so there is no transportation cost at all there, of course, which makes it rather attractive.

Q. Do you know whether any of that coal, that is, the coal from the mine serving the Paradise plant has moved to Widow's Creek?

A. My understanding was that for some temporary period some of it did while TVA was having diffi-
4353 culty with the equipment at Paradise and couldn't use the coal there and rather than refuse to take it, which I think under the terms of its contract we could, I think rather than refuse the coal we moved some to, I shouldn't say "we," because this is after I left TVA, but TVA, I understand, did move the coal to Widows Creek for a temporary period, I don't know how long that was.

Q. One question, Mr. Kampmeier, I think it is Exhibit 174 that you were looking at, the one in front of you, if you will be good enough to look at the number, please, sir, the very first page of that exhibit.

A. All right.

Q. Is that Exhibit No. 174?

A. 175.

Q. 175. Is this a published publication of TVA, is that their analysis of all bids received by TVA on the term contracts?

A. No, I think not. TVA prepared such an analysis following each bid opening, and I think that a summary was prepared of the bids that were accepted, and I think that was given some general distribution, but I think that this analysis of all bids opened was not what one would call a published document.

Mr. Rayson: That is all.

4354 CROSS EXAMINATION

By Mr. Rowntree:

* * * * * * * * * *

4372 Q. (Interposing) Are you familiar with the amount that Tennessee Consolidated expended on mechanizing or the amount that Tennessee Products guaranteed on loans to the small mechanized mines?

A. I have no recollection of the figures, but I was fairly familiar at the time with the statements that the companies made to us as to the various steps that they had taken and were taking and were prepared to take and what was involved in them in terms of cost.

Q. But there would be a limit as to how far a company of modest sums and means could go in expending money or guaranteeing funds on a mechanized project?

A. Well, there would be a limit. The limit would be quite a long ways beyond the numbers that were being talked about.

4373 Q. Well, would you say that a million dollars is not the limit for a company the size of Tennessee Consolidated?

A. Well, sir, I think that the only way that I could answer that, and I will do my best to be as responsive as I can, is that these companies were not content, nor did we want them to be content, with the present size of their deliveries to TVA. They were talking in terms of expansion and we were anticipating that the field might, that these principal producers in the field at least might be producing two or three times as much coal as they were and for operations geared to that kind of an output I would say a million dollars would be a rather small amount of money.

Q. What was the problem after the Section 22 rail rate from west Kentucky to Widows Creek, was it the rail rate or was it some other problem that was the main concern of this coalfield?

A. Oh, the rail rate was one of a number of elements

of an overall problem of their not competing successfully or as successfully as they might or we thought or hoped they would in the total TVA market.

The problem was that as conditions changed and other suppliers became more and more competitive relatively this field became less and less competitive.

Q. Well, I believe it was your position in the ICC case in which TVA intervened on the Section 22 rate from west Kentucky to Widows Creek that the Section 22 rate
4374 was really beneficial to the southeastern field, is that not true?

A. Yes, not directly but indirectly in the sense that if there had been no such rate from western Kentucky to southern Tennessee there would have been no expansion of the Widows Creek plant and without an expansion of the Widows Creek plant the opportunities of the southern Tennessee field would have been less than they were with the expansion of the plant. It all comes back to the proposition that I referred to much earlier in the case that TVA created a market which grew to 20 million tons a year when it might otherwise have been only a couple of million tons a year and a substantial part of that growth to 20 million tons was the growth that was taking place at Widows Creek, and I think it is very obvious, or at least it always seemed so to me, that the southern Tennessee field, or any other element in the TVA coal supplying picture, is much better off with a 20-million-ton-a-year market than with a 2-million-ton-a-year market, even though they might wish that the prices in the 20-million-ton-a-year market were the prices that would exist if it were a 2-million-ton-a-year market, so my point here, the point I was trying to make before the ICC, is that the expansion of the market is the important thing, after all, to folks like the southern Tennessee coal producers and there could not have been that expansion at the time of that freight rate without the freight rate.

4375 Q. The problem is the competitive position with respect to the west Kentucky field?

A. With respect to the west Kentucky field, the northern Tennessee field, the Virginia field, the east Kentucky field, because they are all competing in the TVA coal supply picture.

Q. But on this immediate market, the Widows Creek plant, it was the west Kentucky field that was the source, main source of competition after that Section 22 rate?

A. Right. It has been interesting, though, to me that, for instance, the closer mines to the plant than southern Tennessee, in northeast Alabama, have begun, since I wrote the letter to Senator Kefauver in which I said if anybody ought to have a preference maybe it is the nearest mines, the Alabama mines, that since that time they have begun to supply increasing quantities of coal to Widows Creek also, so it isn't just a particular competitor, it's the whole competitive picture.

Q. Would you say that the main problem of the southeastern Tennessee field is the failure to reduce its labor cost?

A. Yes, if you will allow me to make it very clear that I don't mean that reducing labor cost means reducing wages. I think that the main difference which may be just what you were saying, but I want to be sure that I am not
4376 misunderstood, that the main difference between that field and most of the suppliers in TVA in their competitive positions and their cost position is that wage costs per ton are higher in that field than for most suppliers because their productivity per man is lower.

* * * * * * * * * *

4381 By Mr. Rowntree:

Q. Mr. Kampmeier, I show you Exhibit P383, would you look on page 89 and 90 of that exhibit with
4382 respect to the southeast, the east south central area, and I will ask you, does that show the cost per ton at the

steam plants, the utility plants for the States of Kentucky, Tennessee, Alabama, and Mississippi?

A. Yes, it does on page 89 and 90.

Q. Would you look on page 90 for the year 1958 for the area as a whole?

A. Yes.

Q. Do you find a figure there for the cost per ton at the plant in that area for the year 1958?

A. Yes, if you are referring to the figure in column 9, cost of coal per ton, total, east south central states.

Q. That is right, correct.

A. $4.61.

Q. Now, outside of the State of Mississippi are not those states that have the TVA steam plants situated in them?

A. Yes, that is correct.

Q. And is Mississippi a substantial user of steam utility coal?

A. Not very substantial. No, the figures would appear here it is not very large.

Q. Is it about 4,000 tons a year or something like that?

4383 A. Right, 4,000 tons per year.

Q. Now—

A. (Interposing) That is in 1958, which more or less is a typical year also.

Q. Would you look at pages 81 and 82 of that exhibit for the area of east north central and would you state what states that area covers?

A. East north central includes—what I am looking at the page starts with the word "continued," but I don't think it is continued, so ignoring that for the moment, it would include Ohio, Indiana, Illinois, Michigan, and Wisconsin.

Q. Would you look on the total for that area for the year 1958 and see what the price per ton was in that area at the plant?

A. Yes, 1958 total east north central states delivered cost per ton of coal, $6.00.

Q. Now, it is true that transportation does enter somewhat into this picture, is that not right?

A. Yes, rather considerably, I would say.

Q. But is it not true that the States of Illinois, Ohio, and Indiana that are considerably ahead of the State of Tennessee in the production of coal, the availability of mine sources?

A. Yes, Illinois and Indiana produce more coal than Tennessee, is that your question?

4384 Q. What about Ohio?

A. Ohio also. Ohio, Indiana, and Illinois always produce more coal than Tennessee, I think that is correct.

Q. In your direct testimony — I beg your pardon.

A. Because I am not quite sure I understand what you may be intending to bring out there, perhaps I should note that if you are comparing east north central with the other area, east south central, that, of course, the principal producing state in east south central area is not Tennessee but Kentucky.

Q. Kentucky. Now, of course, these figures are the cost to the utility at the plant?

A. Right.

Q. And really the production sources would go to the problem of transportation availability of coal in the areas of the plants?

A. Yes, if you would like to try to make comparative costs of the coal, excluding transportation, this is a rather clumsy way to try to get at it, unfortunately.

Q. Yes, but it is the best way we have.

A. No, it isn't; no, it isn't actually.

Q. What do you have in mind?

A. Well, I, of course, have been interested for a long time in comparative costs of coal and one of the things that recently became available directly from the Federal

4385 Power Commission which I think is much more help-

ful in this regard, is this data based on figures submitted to the Federal Power Commission, the Federal Power Commission itself recently put out a report called "The National Power Survey" in two volumes, of which this is the second volume, a monumental report which compiles more basic data with regard to the electric power industry than has ever been done before.

In that report, among other things, is a tabulation of typical coal prices f.o.b. mine for electric utilities, and I think this gives us a much more refined approach to the problem and still leaves some difficulties, but it eliminates not most, at least the greater ones, and if you would like to pursue this point slightly further, I could do it.

Q. What sort of prices do they have on there, utility prices or what?

A. Yes. Let me just quote from the report this paragraph, "In order to determine the f.o.b. mine price of coal the cooperation of a number of major coal consuming utilities in different areas of the country was requested. This report is compiled from the answers of twenty selected electric utility systems which purchased approximately 85 million tons of coal during 1961 or more than 45 per cent of all coal burned by electric utilities."

And they follow then with a tabulation of 1961
4386 average price f.o.b. mine and cents per million BTU by coal producing districts and District 8, for example.

Q. What is District 8?

A. This would be eastern Kentucky, northern Tennessee, and small parts of Virginia and West Virginia.

Q. All right, sir.

A. 14.34 cents per million BTU for District 9, which is western Kentucky, 12.56 cents per million BTU for District 10, which is southern Illinois, which is Illinois, totaled 15.03 cents per million BTU, and then the only other district that I think we are particularly concerned with is District 13, which is southern Tennessee, Alabama, and

perhaps a county or two in Georgia, 15.82 cents per million BTU.

Q. Does it have Indiana or Ohio?

A. Yes. Ohio is District 4 and the average is 15.20 cents per million BTU.

Q. What about Indiana?

A. Indiana, I don't remember what district that is, let's see, District 11, 15.56 cents per million BTU.

Q. Ohio, Indiana, and Illinois are roughly equivalent to the price in this district right here?

A. No, no, I would say not, Ohio and Indiana are 15.2 and 15.56, respectively, and I computed an average for this district based on proportioning this area, the TVA
4387 area, based on proportioning a weighted average, the prices for the district involved in proportion to the total amount of coal TVA gets from each and came out with 13.7 as being the figure here that would be the price that you might say that TVA would have paid in 1961 if it had paid the same price that the other, that the utilities reporting here paid for those districts.

In other words, using the proportion of TVA's purchases by districts, but using these folks' data rather than our cost, you would get 13.7, which was what the alternative cost to TVA would have been had they paid the same price.

The Court: Your cost is not included in that, TVA's cost is not a part of that compilation?

The Witness: Yes, I assume that TVA's costs are a part of this. This would be comparing TVA with an average for all of the systems, including TVA, and that figure for the average of all of the reporting systems which account for 45 per cent of all coal burned by electric utilities, according to this report, is the figure that I arrived at.

By Mr. Rowntree:

Q. What about Illinois, I didn't get that?

A. Illinois was 15.03, and that was included in my weighted average of 13.7.

4388 Q. I didn't quite understand. I thought the 13.07 was the southeastern Tennessee.

A. No, the 13—

Mr. Owens: (Interposing) Your Honor, I can't hear either Mr. Rowntree or the witness.

By Mr. Rowntree:

Q. I am still not clear on the 13.07.

A. Well, I am sorry that I wasn't more explicit. Let me be more explicit.

Q. Do you have a figure for the southeastern and Alabama area, southeastern Tennessee and Alabama?

A. For District 13, which is southeastern Tennessee and Alabama, and I think a bit of Georgia, let me just be sure that I am not misstating, yes, Dade and Walker County, there's practically no coal production there, but, anyway, they are included, the average is 15.82. Now, my figure of 13.7, let me be sure I haven't misled you with regard to that, what I did was say that TVA gets or did get in 1961 certain proportion of its coal from western Kentucky, about 47 per cent, and a certain proportion of its coal from Illinois, about 16 per cent, and a certain proportion from District 8 and a certain proportion from District 13, and taking those proportions as the basis for weighting and arriving at an average price from these four districts weighted by supply produced the figure of 13.7, so I think if you

4389 are looking for, as I gather you must be, a figure of average prices paid by all power systems and not just TVA, drawing from the area that TVA draws from and proportioning the way TVA draws from those areas, you would get a figure of 13.7, and I think this is a much more reliable figure than one could derive from these delivered cost figures or any other source that I know of.

Q. Was the one you have given f.o.b. mine?

A. Right.

Mr. Combs: Counsel, pardon me. Did he say what the national average was? I got the 13.7, but what is the other?

The Witness: No, I did not, I am sorry, I think it is here. The national average was 15.02.

By Mr. Rowntree:

Q. Now, let me have the west Kentucky figure once more.

A. Yes, 12.56.

Q. Mr. Kampmeier, have you ever seen a sheet like I am handing you now?

A. I don't recall ever seeing a sheet exactly like this, although if it shows what I take it it does, I am sure I saw the equivalent of it in various forms.

I don't recall ever having seen exactly this list, this kind of a list.

4390 Q. Looking at that, can you tell whether that purports to be a summation of the existing contracts and the date there in 1956 for the middle western coals coming into the TVA system?

A. Well, this is listed "TVA Contracts in Effect as of November 1, 1956," and it lists quite a number of contracts, and apparently only contracts in the western Kentucky and perhaps Illinois fields, so it may purport to be a complete list of those contracts or it may not, it doesn't say.

Q. It gives the contract number and the number of tons per week, the price?

A. Yes. I don't recognize the sheet and I could not say any more as to whether it is a correct and complete list and I have said it appears to be a listing of such contracts and many of them look familiar to me by name and so on, companies and mine sources and so on, but I have no way of saying whether this is a correct list or not.

Q. You would have to look at the TVA award sheets to determine the accuracy of that sheet, I suppose?

A. Well, even more than that, I suppose I would have to not only look at the successive awards but I would also have to verify whether or not any of those contracts have been cancelled or amended or otherwise modified.

4391 Kentucky Q. Could you say whether or not in 1956 West Coal Company and Nashville Coal Com-

pany combined was the principal shipper of coal from the middle western field to the TVA?

A. Well, I would say that probably they were, at least they were among the two or three largest, and I would say that in '56 they probably accounted together for more than any other supplier. I am not completely positive, though.

Q. All right, sir. Now, I believe on your direct testimony you pointed out that—

The Court: (Interposing) That was West Kentucky and who?

Mr. Rowntree: Nashville Coal Company combined.

By Mr. Rowntree:

Q. That the Peabody Coal Company represented about one-sixth of the coal supply to TVA?

A. Yes, roughly. I was pulling a figure out of my mind by doing some mental arithmetic, it might be one-seventh or one-eighth, but it is in that general order.

Q. Was Peabody shipping on other contracts besides the Paradise contract?

A. Yes. You say was it?

Q. Yes.

A. You mean when?

Q. Well, now, whatever time you were talking
4392 about on your direct testimony, I have forgotten what period that was.

A. What I said, I think, or intended to say at any rate, was that the Paradise contract was one that was made late in the period that I was referring to as the period which was namely up through '62 and that it was made rather late in that period. Shipment did not actually begin on it until after the period so that I was not actually talking about any deliveries on that contract during that period. I was only noting the fact that after that period there were deliveries on that contract which would now amount to, say, one-sixth or one-seventh of the total amount. There were deliveries on other contracts throughout much or all of

that period and those amounted to, I think I testified, probably around 5 per cent in the early years and around 10 per cent in the later years of the total TVA receipts.

Q. So that would be 10 per cent plus one-seventh, say, or one-sixth?

A. Yes, something like that. I don't know that those can be added directly, because I don't know well enough what the percentages were of other deliveries by Peabody by the time the Paradise contract came into effect. If one assumes that they were continuing at about the same rate that they were in the late fifties, then you could have those, but this would be an assumption on my part, I don't know.

4393 I am not that familiar with how the various suppliers shared in the market after about '62.

Q. Then I believe you attributed about 5 per cent to Pittston?

A. Yes, up to 5, I would say 4 or 5.

Q. And that would be the Clinchfield mine at Monterey and the Virginia mines in Moss No. 2 or Moss No. 3?

A. Well, total deliveries from Clinchfield, Virginia, mines, there were some others besides the Moss mine, but that was the principal supplier.

Q. About 2 per cent from Pittsburgh-Midway?

A. Yes.

Q. About one per cent from Consol?

A. Yes.

Q. Now, we will have to adjust our Western Kentucky figure, West Kentucky coal figure upward, would we not, after these last two contracts, since they are now shipping about 4 million tons a year to the TVA system, according to their recent figures?

A. I couldn't say yes or no to that. I did say, and this is as far as my recollection carries me, that there was an increase in shipment by West Kentucky as a result of those contracts that are made in '61 and then later they exercised that option in '61 or '62 and they brought the ship-

ments from West Kentucky up, but this happened
4394 after the period we are moving out of.

Q. If they were shipping 4 million ton a year to the TVA system, that would be roughly 20 per cent?

A. Well, it would be, it would be roughly 17 per cent, something like that.

Mr. Rowntree: That is all.

The Court: Mr. Kampmeier, in quoting from the Federal Power Commission report on District 9, for example, west Kentucky, you gave a cost of 12.56 per million BTU. In District 13, southern Tennessee, you gave a cost of 15.82 cents per million BTU.

Could you approximate what that would mean in cost per ton, difference in cost per ton?

The Witness: Yes. If the coal were of the same quality, which of course it is not, then the difference between those two numbers, which is 3.26 cents, would be roughly 85 cents a ton, but the difference in price per ton is actually considerably more than that because of the fact that one is a different quality than the other.

Now, here I have to do a little guessing, if you don't mind, because I don't know what the average BTU content would be of either of the coal bought by all utilities, west Kentucky, or the coal bought by all utilities in southern Tennessee, but if one were to assume, for example, a figure of, say, 11,800 BTU per pound as being more or less
4395 typical of west Kentucky, I think that would be for west Kentucky, that wouldn't be too bad, then that would mean that the cost per ton for western Kentucky coal would be an average of about, oh, 2.95 a ton, say, which doesn't sound too bad, I mean it seems to check out reasonably. I would say that maybe, I would have thought the cost per ton might have come out slightly lower than that, if so, that would mean that the BTU may be a little lower, but this is about as close as I would venture to a guess.

Then on southern Tennessee if one assumes that the average was 13,200 BTU per pound, which I think was about

what most of the deliveries on Palmer and Whitwell ran, than that 15.82 cents per million BTU, that would be about $4.20 roughly per ton, so that is the difference there, might be a dollar twenty-five cents or something like that.

The Court: One other question. Earlier in your direct testimony you were testifying as to the percentage, approximate percentage of the market that various coal operators supplied to the TVA market, and you indicated that approximately 50 per cent of the market was supplied by a number of coal operators that Mr. Rayson named as being supposedly some of the larger coal company operators, you named 25 per cent. What I want is what period of time were you talking about?

The Witness: I was talking about the mental pic-
4396 ture that I had in my mind of the period of the total coal purchases that TVA made for '52 to '62, which add up to probably 150 million tons of coal, more or less, and that 150 million tons of coal more or less I divided them out that way. Now, I am not quite sure whether, as I understood your question correctly, but I think I said that the companies that he had asked me about specifically accounted for 25 per cent.

The Court: 25 per cent, that is correct.

The Witness: Then I named some others that might account for roughly another 25 per cent, and then the other 50 per cent would be by unnamed companies.

The Court: Yes.

The Witness: The proportion actually of 25 per cent, I think, would not only be pretty close to right for the 10-year period, but I would say it probably didn't change greatly during that 10-year period, it might have been gradually increasing during that period but not greatly.

The Court: This other 50 per cent that came from other companies, what geographical distribution would you say that came from?

The Witness: Well, I would say that 40 per cent may be out of western Kentucky and Illinois, maybe 30 per

cent out of eastern Kentucky, eastern Tennessee, and the other 30 per cent, well, maybe half of that was sold
4397 in Virginia and the other half from southern Tennessee and Alabama.

The Court: All right.

REDIRECT EXAMINATION

By Mr. Rayson:

Q. Mr. Kampmeier, it would be helpful if you would explain to us how you arrived at the 15 to 20 cents per ton differential that you estimate the TVA enjoys over the other utilities?

A. Well, I have said that I think my own statement, just judging from all of the various cases where we had had opportunity to make comparisons, and on that it led me to the judgment that the figure might be about 15 cents, and I said that some consideration of the available data indicated it might be a little more, and I was referring there largely to these that I was just quoting which arrived at this figure of 13.7 cents, the figure for cost of coal received by TVA in 1961, and that was, I am speaking of fiscal '61, this was probably calendar '61, but this is cost, and figures fortunately weren't changing too fast right along in there, in TVA's Annual Report it shows the figure of cost of coal at the plant of 18.38. Now, that includes transportation and includes TVA's receiving costs, and transportation I estimated to be about 4.9 cents per million BTU or maybe 5, depending, I would be inclined to round it off to 5, although my estimate was as near as I could figure was a little
4398 less than that.

The handling costs are in the order of six-tenths of a cent, that's the cost of unloading the coal from the cars, or barges, and simply putting it into stockpile and so on, so you might say 5½ cents out of the 18.38, other than the cost of the coal at the mine, so this would get you down to about 12.8 maybe, and it is foolish to talk about

.88, it's not accurate, but 12.8 or 9 or thereabouts as being the average cost at the mine for TVA as against 13.7 for the total of all systems buying from those areas, including TVA. This is a difference of about eight-tenths of a cent per million BTU, which would be equivalent to about 17 cents or so per ton and considering that the TVA figures is included in that, the difference between TVA and the others would be bigger than 17, and I don't know how much bigger, but maybe 20, 21 or 2, and so I say that the 15-cent estimate that I made, the nearest I can come to proving it out with figures comes to a little higher figure.

Q. All right, sir.

A. But, frankly, I don't think that either the 15 or the 20 or 21 or 2 is quite that accurate. I think all one can say is that that is in the ball park and it ought to be a reasonably good estimate.

Q. Now, Mr. Kampmeier, about the freight rate again. Did TVA obtain a Section 22 rate from west Ken-
4399 tucky to Colbert in 1960?

A. Yes, at the same time that we obtained the rate to Widows Creek.

Q. All right. My final question. You mentioned George Gilbert and stated that he was involved in some manner in 1955 in connection with some coal going to Widows Creek. Do you know of your own knowledge whether George Gilbert was involved in that?

A. Well, if you are asking me did I ever meet him or see him or whatever, no.

The Court: Are you fearful of being sued by West Kentucky? Do you think you want to develop that point?

Mr. Rayson: It was West Kentucky Coal. Oh, all right. Western Kentucky. I think that concludes my question.

The Court: All right. Anything further of Mr. Kampmeier?

(Witness excused.)

* * * * * * * * * *

L. C. GOERING,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

4400 By Mr. Owens:

Q. Will you state your name and address, please?

A. L. C. Goering; 705 Indian Ridge Road, Louisville, Kentucky.

Q. Are you retired, Mr. Goering?

A. Yes, sir, as of January 1st, this year.

Q. Who did you work for?

A. Louisville and Nashville Railroad.

Q. And what was your position with the L&N?

A. When I retired I was assistant to the vice-president of traffic. Before that coal traffic manager from 1947, before that chief clerk in the coal department, from '39, and before that in various capacities in the traffic department of the L&N back to 1921.

Q. As assistant to the vice-president in charge of traffic, what were your duties?

A. I had charge of coal traffic rates and development of coal traffic and various matters relating to coal traffic of the L&N Railroad.

Q. And you had had that position since when?

A. From 1947. I was coal traffic manager, had similar duties and then as my retirement approached other men were brought in to succeed me and I took over as assistant to the vice-president in charge of traffic while they were more or less learning.

4401 Q. In that position did you enter into negotiations with the TVA regarding rates from western Kentucky coalfields to Widows Creek Steam Plant?

A. Yes, sir.

Q. Will you describe, starting from the beginning, how that occurred?

A. Well, I think perhaps that it wasn't quite proper

to say from west Kentucky to Widows Creek, because when Widows Creek came into the picture we were thinking of both southern Tennessee and western Kentucky.

It came about like this: We had not been handling any traffic to the Widows Creek plant out of west Kentucky but had been handling some of the traffic from southern Tennessee. Other traffic to Widows Creek moved by truck, I believe, and some by truck and barge, but TVA was considering some changes in the channel at Sheffield, near Sheffield, Florence, Alabama, and there is a bridge across the river which the L&N used that is owned by the Southern. L&N uses it to reach Sheffield, Alabama, on the south side, and in the negotiations concerning that channel change it developed something might be done which would make that bridge have to be changed in such a way that the cost would be almost prohibitive, and the Southern Railway, who owned it, were giving some consideration to just doing away with the bridge if that came to pass. That would have
4402 meant that the L&N had no entrance into Sheffield, Alabama, where we had tracks but used the bridge to get there, so in looking around for ways and means to see what we could do about that situation in case the bridge was not available to us we conceived the idea of using an old car ferry which we inherited from the NC and St.L after they merged into the L&N. That car ferry was a steam vessel, it was used for hauling cars across the river at Guntersville, Alabama. The NC and St.L had tracks on both sides of the river at that time and even later, but that branch became expensive to operate, didn't pay its way, and the car ferry service was discontinued by proper authority, and we had a boat sitting down there, nothing to do with it, and apparently it was a fairly old boat and not easily sailable, so we had the boat and this situation came up at Sheffield and we conceived the idea of staying in Sheffield by taking cars down over our rails to Florence, using their car ferry to get them over to Sheffield and then putting them

k over on the rails on that side, thinking that, we looked
vn the river and here was the Colbert plant of TVA using
llions of tons of coal and only 11 miles from Florence,
we thought, "Well, if it's workable to take cars across
river to Sheffield, it might be we can work out something
the Colbert plant, the steam plant, and handle some coal
t way."

Now, that plant was on the Tennessee River and
03 it was also on the Southern Railway but we had not
been able to make rates, all rail using the 2-line haul,
get to handle any coal in this plant anywhere and they
re getting all their coal by river barge.

The tail sort of ran away with the dog there because the
idge situation cleared up and it became apparent that
e bridge would be continued and that we would not need
use the car ferry and so then we began to seriously think
out the Colbert plant and handling coal down there.

So we initiated conferences with the TVA with the view
seeing what we could do about getting into the Colbert
lant, and those conferences were along for some time.

Q. Who did you talk to?

A. Mr. Kampmeier, mostly, and his associates, must
ave been 10 or 12 people in TVA altogether that we talked
ith, but Mr. Kampmeier was the leader of the group in
ll instances when I was negotiating.

We got TVA interested because they were building some,
oing to build some new capacity at the Colbert plant, and
e got them interested, and the L&N handled some coal
down there by rail and water if it could be worked out and
rom there on we worked on, worked out a rate to Florence
or barge movement beyond but instead of using the car
erry, which proved to be an expensive vessel, which we
assumed that or rather it was figured out would be
404 too expensive to operate, being an old one, we finally
evolved down to using regular barge lines and getting
a quotation from them and letting the regular barge line
company do the barging.

Now, in the course of these negotiations, TVA brought up the situation at Widows Creek, said they were not happy with their coal costs down there and why didn't we just work out something to both plants at the same time, and so from there on, and I can't say exactly when the one came in, when Widows Creek came into the picture, that's the discussion about Widows Creek, but from there on out, then the discussions that we had were to both plants, Colbert plant and Widows Creek.

And we finally, and we had to depend upon, of course, TVA, as a matter of fact, when we were negotiating rates with power companies we have got to, we have got to discuss the matter with them and they tell us what the situation is and we have to accept what they say as being facts and, as I say, they asked, they were dissatisfied with the situation at the Widows Creek plant that had become one of the most expensive power producers on their system.

Now, here was a thing that had a bearing on that, that plant was served by the rails of the L&N Railroad. I was the only plant that we reached with our own rails, outside of Gallatin, which was a relatively new plant, which was put in some few years ago, but a relatively new plant,
4405 and the other plants of TVA, and there must have been seven of them altogether were on another railroad, and beyond our reach mostly.

Well, one, Johnsonville was on the L&N and on the river but we were never able to do any good down there because all of that coal gets closer to Gilbertsville where the IC reaches the river and all of that coal had moved by rail and water on very low rail rates for proportionate rates and a very low barge rate, so when the Widows Creek thing came up TVA told us they were dissatisfied and that if they couldn't do something better down there with their power costs, not despite the fact that they had recently completed a new 500,000-kw unit, that that market for coal was going to start down and inevitably in the long run as the newer

plants came in other places that probably that market would cease to exist for coal.

Now, that is steam, but we have seen other plants go out completely when newer plants come in at different locations and naturally if the plant that is on your line goes out of business and the plant that is on somebody else's line stays in business then the railroad itself loses the business along with a coalfield, if that coalfield can only serve one plant.

So we were vitally interested then when TVA brought it up in doing something that would maintain Widows
4406 Creek as a market for coal and they, the TVA, told us that not only could that become a growing market again but that they would put another 500,000-kw unit down there if they could get the proper coal costs.

So they finally told us what the proper coal costs — what the freight rate from western Kentucky would have to be and we concurred in and we agreed with them to establish those rates, at the same time hooking them up in such a way that we would not cause TVA to buy coal in either southern Tennessee or western Kentucky except as the economics dictated. So that resulted —

Q. (Interposing) What — excuse me a minute — what factors play a part in the determination by the railroad of whether they will accept the decrease in the freight rates?

A. You have to, you have to figure whether or not you are getting the facts and if you want the business you are going to have to meet the purchaser's views and so then, of course, we have general judgment, we have negotiated a lot of rates down through the years and we have judgment that we apply to these things.

Q. Volume of traffic have anything to do with it?

A. The volume then, of course, and at this particular time it was the beginning of the time when we began to make volume rates. Now, we had a sliding scale of rates to Gallatin, which started at some figure around 500,-
4407 000 tons and went up to two million tons and as the tonnage goes up the rates go down.

Now, we had conceived that, we didn't necessarily think that up, I think maybe Mr. Kampmeier may have originated it, but we accepted it as being a good plan because the railroad is a volume mover, it has to have volume, and the more volume it gets the more the unit cost goes down, that is to say, the railroad has a lot of fixed costs that go on whether you are handling a little traffic or a lot of traffic, and so if you can up your traffic then you can afford to take less revenue in it and still make money on it and so then these larger movements lend themselves to a cheaper way of handling, like putting them in trainloads, and you can bypass yards with them and save switching expense in yards and those kind of things, so that when TVA began to talk volume, then we were in position to talk lower rates, but in the final analysis, after working something out like that, we have to satisfy the buyers or we are not going to do any business with him at all.

Q. Well, did you know how much coal that would take at Widows Creek in various coalfields or how much coal was available?

A. No, we know what TVA proposed to us at that plant, if they got the coal cost to a point where they were satisfactory, and it went above two million tons a year,
4408 and even more was in prospect, and I don't know what it is right now, it may be more than two million tons a year right now, but they had instead of that being a place where such tonnage as we were handling by rail from southern Tennessee would begin to disappear, instead of that we had an opportunity to build up the traffic from either southern Tennessee or western Kentucky and it really didn't make any difference to us which one it came from, but we had to get a situation that would satisfy TVA so that they would continue, so that that plant would continue to work out on an economic basis so that would be a large coal consumption and that they would put the additional unit there or even more units later on, we hoped.

Q. Did the United Mine Workers or did any coal company have to initiate these negotiations?

A. No.

Q. Did they play any part in the negotiations?

A. No, sir.

Q. Did you have discussion with any coal company about the availability of coal?

A. Yes. I knew West Kentucky Coal Company had one mine, East Diamond, which had operated in the No. 11 seam and which was considered the better seam of coal at that time, the more acceptable seam on the market, at least, and most of that coal had gone north, but the No. 11 seam
4409 worked out at East Diamond, and it's a big mine, and they knew this, and they had told me that the No. 9 seam was underneath and that they could go on down to the No. 9 seam by just extending their shaft further down and they had all the tipple facilities and our tracks were in there and everything and they said that if they could find a market for some No. 9 coal they would go down to that No. 9 coal and reopen that mine.

So I was concerned with the availability of the coal because we had, when we got into the Gallatin plant with them, and then we started talking about Colbert, then Widows Creek, we know, and it was my responsibility to be able to develop enough coal traffic on the L&N or capacity on the L&N so that TVA would feel confident in tying up with us on large tonnages, and so I was anxious to see West Kentucky Coal Company, or any other coal company, open up a mine so as to increase its capacity on the L&N, and so I did talk to West Kentucky about the possibilities of reopening their mine so that we could have additional capacities, so that when TVA said anything to us about, "Well, maybe there's not enough coal on the L&N," we would be able to assure them that there was enough coal on the L&N and they have said that to me.

Q. Well, did you discuss the rate with West Ken-
4410 tucky Coal Company?

A. No, sir; no, sir.

Q. Did you have discussions with Tennessee Consolidated Coal Company and Tennessee Products and Chemical Company?

A. I had discussions, if you want to call it that, I think perhaps it was a meeting more than anything else, in which they had learned, maybe I told them, I am not sure, that we were talking with TVA about rates out of west Kentucky to Colbert and Widows Creek, and I think they saw our president after that and were perturbed that we were talking about rates from some other section and he told me that before we made any final decision we would get in touch with them and tell them what we were going to do, and so when the rates were finally arranged or agreed upon between TVA and the L&N I immediately called Mr. Widell, Mr. Glenn and Mr. Stanlee Hampton and Mr. Callis, went down to Nashville and met with them and told them what the rates were going to be.

Q. Did you then make a rate, a lower rate, for the Colbert plant also?

A. Yes, sir.

Q. I hand you a document and ask you if you recognize this?

A. Yes, sir, I do.

Q. What is that?

4411 A. That is the decision of the Interstate Commerce Commission in the Section 22 case which has been mentioned here today, Document 33768.

Mr. Owens: I'd like to have that marked and made an exhibit.

The Court: Exhibit No. 384.

(The document referred to above was marked D384 and received in evidence.)

Mr. Owens: I want to read from page 507 of the Interstate Commerce Commission decision.

Mr. Rowntree: May I ask counsel the pertinency of this?

Mr. Owens: We want to show that this rate was approved by the ICC and that it was not a detriment as complained about by the Tennessee Consolidated and Tennessee Products.

"Here, the expansion of Widows Creek coal market was based, in large measure, on the availability of coal from west Kentucky. The defendant's inclusion of southern Tennessee coal in the volume which controls the progressive reductions available to west Kentucky origins was to insure the participation of complainants in this market. The evidence tends to show that this result materialized. Complainants' insistence that the assailed rates work to their detriment is not borne out by the facts.

4412 "In our judgment, it is not the presence of a sliding scale but the level of the rates that is controlling. Here, for example, the lowest rate available to western Kentucky producers is substantially higher, in either absolute or relative terms, than the rates available to complainants. Complainants' opportunities to compete are not impeded by discriminatory freight rates. For admittedly, the rate relationship is not the source of the alleged injury to complainants. It thus seems clear that the complainants' difficulties, if any, stem from geographical and physical property handicaps rather than from transportation charges. As the Supreme Court said in Interstate Commerce Commission versus Diffenvaugh, 222 U. S. 42, 46 (1911), the Interstate Commerce Act 'does not attempt to equalize fortune, opportunities or abilities.' Accordingly, assuming jurisdiction to lie, arguendo, we find that the assailed Section 22 quotation is not shown to be unduly prejudicial or preferential." Your witness.

CROSS EXAMINATION

By Mr. Rowntree:

Q. Mr. Goering, with whom did you talk about this rate in the West Kentucky Coal Company?

A. About the rate?

Q. Yes.

A. I didn't talk to anyone about the rate.

4413 Q. Who did you talk with in West Kentucky Coal Company after you became interested in negotiating a rate with TVA for Widows Creek and west Kentucky?

A. I don't think that was quite the proper way to put it. We were dealing with Colbert and Widows Creek [illegible] about the tonnage we could produce in trainload [illegible] of coal, please, to go to Colbert plant, because that was going to be a combination rail and barge movement and we had to have, we wanted to move it in trainloads and we had to move barges on a specified time basis so that we could get maximum use out of them, and we were trying to get a quick turnaround on the equipment, so I was primarily concerned in talking to him about whether or not he would have coal which he could load quickly and in such qantities to go down to Colbert, is what I really had in the back of my mind, but you didn't tell him that, I just simply asked him what he could load and how fast he could load it and whether or not if he could find a market for that No. 9 coal at East Diamond if he would reopen the mine.

Q. You talked to Mr. Bowden, who is vice-president?

A. I talked to Mr. Bowden mostly.

Q. Vice-president in charge of sales?

4414 A. Vice-president in charge of sales.

Q. He was indicating that they would go down to the No. 9 seam in the East Diamond mine?

A. If they could find a market for it.

Q. Well, didn't Mr. Kampmeier advise you that during that period of time that West Kentucky Coal Company was seeking a market for the rest of their production from the Pleasantview mine in amounts of 34,000 tons a week?

A. I don't know that Mr. Kampmeier told me anything about it. I got those bids that were put out by the TVA

together with the results lots of times, and I read them just as a matter of information.

Q. Well, didn't Mr. Bowden advise you that they had a certain surplus amount of coal at West Kentucky out of the Pleasantview mine during that period of time?

A. I don't know that he said that he had a surplus. He was running the Pee Vee mine, is the one you may be talking about. I thought that was running pretty good and I was really surprised later when they turned out as much tonnage from that mine as they did. Now, whether or not they had that capacity all of the time I don't know, but I was not shooting for just one, I was trying to build up capacity, if you please, because we were trying to go not only to Colbert and Widows Creek, we had Gallatin coming up all of the time.

4415 Q. Well, Mr. Bowden didn't indicate to you during that conversation he had any problem with surplus tonnage laying around that he wanted to get on the market some place?

A. No.

Q. And at that time he was talking about developing the East Diamond mine, going down to the No. 9 seam?

A. Yes, yes.

Q. What was the Gallatin rate that you mentioned, was that a Section 22 rate?

A. Yes, sir.

Q. And what was that rate from west Kentucky origin?

A. I think it was a sliding scale, I am not sure whether it started at $1.65 or $1.60 and went down to $1.40 in certain tonnages.

Q. $1.40?

A. In certain tonnages.

Q. And the rate from west Kentucky origins to Widows Creek was how much?

A. $1.60 down to $1.40.

Q. Practically the same rate?

A. Yes, sir.

Q. And those trains destined for Widows Creek go right through Gallatin?

A. No, sir.

Q. Well, they go through a branch or they go
4416 pretty close to Gallatin, don't they?

A. No, not necessarily. Gallatin is on the main line north of Nashville, between Louisville and Nashville, and Widows Creek is on the line from Nashville down to Chattanooga and it was an inter-divisional move, that is, to Gallatin, had to go over two different divisions, which meant changing crews and all of that, so did Widows Creek have to go over two divisions.

Q. The distance to Gallatin is —

A. (Interposing) Shorter, yes, sir.

Q. How much?

A. I think it's 118 versus 235.

Q. Gallatin is about half as far?

A. Yes.

Q. And they both ended up with about the same rate?

A. Yes, mileage is important in rate-making, but it isn't all-important.

Q. Now, Mr. Goering, the coal under this rate that came into west Kentucky, when did you first start applying this rate, do you recall what contract?

A. No, I don't know anything about the contracts, I didn't pay any attention to that, once I set up the rates it was up to TVA and the coal companies to sell the coal.

Q. You didn't follow it through?

A. No, sir.

4417 Q. Do you know if the Pleasantview mine is in operation today?

A. I think it is.

Q. Where is the Cherry Hill mine?

A. Sir?

Q. Where is the Cherry Hill mine?

A. Cherry Hill, that's on the Illinois Central, belongs to the Louisville Gas and Electric Company.

Q. How do they participate in this rate, Section 22 rate to Widows Creek?

A. They don't.

Q. Where does that coal go to?

A. I don't know. Some of it probably goes into the Louisville Gas and Electric Company, it's their own mine but they don't use the coal if they can sell it elsewhere, and some of it has probably gone to TVA, but if it did it went out through Gilbertsville and barge.

Mr. Rowntree: That's all.

The Court: All right.

(Witness excused.)

* * * * * * * * * *

4421 C. M. HICKS,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rayson:

Q. Would you state your name, please?

A. C. M. Hicks.

Q. Where do you live, Mr. Hicks?

A. 435 North Main Street, Madisonville, Kentucky.

Q. Are you employed by the West Kentucky Coal Company?

A. I am employed by Island Creek Coal Company, which was formerly the West Kentucky Coal Company.

Q. What is your position?

A. I am vice president and sales manager.

Q. How long were you employed by West Ken-
4422 tucky Coal Company prior to—

A. (Interposing) I came with West Kentucky Coal Company in 1942.

Q. How long have you been in the coal business, sir?

A. Since 1921.

Q. Would you give us your experience in the coal business?

A. I was with Jewett, Bigelow and Brooks out of Detroit working in the Eastern Hazard field from '21 to '25 in the office and then I was with Brier Hill Collieries of Crawford, Tennessee, from '25 to '32, and I was salesman all of the time except for one year when I was with Stearns Coal and Lumber Company from '32 to '42.

Q. With West Kentucky since that time?

A. That's right.

Q. Have you been in sales work with West Kentucky during your entire period?

A. All of the time.

Q. During the last ten years, we'll say, how many of you were there in sales work for West Kentucky Coal Company?

A. In our Madisonville offices there has been two and three.

Q. Who were they?

A. They were R. H. Bowden, John Rich and myself.

4423

Q. Was a Mr. Hoffman employed?

A. T. J. Hoffman.

Q. Where was he located?

A. At Paducah, Paducah, Kentucky.

Q. Do you now handle the sales work that West Kentucky has with respect to the TVA?

A. Yes, I do.

Q. How long has that been under your direction?

A. Since Mr. Hoffman's death, May 4, 1964.

Q. I beg your pardon, I didn't hear.

A. May 4, 1964.

Q. Was that the date of Mr. Hoffman's death?

A. Yes, sir, that's right.

Q. Did you work with Mr. Hoffman prior to that time on any TVA contract bids?

A. Yes, I helped prepare the bids, yes.

Q. Mr. Hicks, how old was Mr. Hoffman when he died, do you know?

A. Seventy-two, I believe.

Q. Do you know how long he had been with West Kentucky Coal Company?

A. I believe all of his adult life.

Q. Mr. Hicks, there has been filed in this case as Plaintiffs' Exhibit 198 a great number of papers purporting to be certain sales of coal made by West Kentucky Coal
4424 Company six months before and six months after April 3, 1961, the date of your so-called T24 TVA contract. Are you familiar with that exhibit?

A. Yes, I am.

Q. Certain sales are not shown this. Do you know what they are?

A. That's all sales of less than 10,000 tons during the period.

Q. In other words, this includes only sales of 10,000 or more?

A. That is correct.

The Court: Are you speaking about tons?

The Witness: Yes, sir, 10,000 tons.

Q. I believe this also excludes some domestic sales?

A. Yes, but there is several domestic sales in there by reason of the fact that we were shipping to the same people that we were shipping industrially and other coals and we couldn't pull them out.

Q. All right, sir. Now, are the prices at which coal was sold as shown in this exhibit, do those prices vary?

A. Yes, sir, they do.

Q. Do you happen to know to what extent they vary?

A. They vary from $2.90 to $5 and to $7.15.

Q. Now, were these coals that you sold here all the
4425 same or were they different coals?

A. Oh, no, they differed very widely as to quality and sizes.

Q. How many different grades and types and qualities

of coal do you produce in this West Kentucky Coal Company?

A. We basically produce four seams of coal, No. 12, No. 9, No. 11 and No. 6, but, of course, all of those sizes, there's just no end to the sizes that could be made by changing screens.

Q. Well, now, you say you produce four different or produce coal from four different seams. Is this coal, does this coal from the standpoint of its inherent quality differ very much?

A. Yes, it does, it differs very widely.

Q. Would you explain briefly what those differences are?

A. Well, our No. 11 seam of coal is only sold as a washed product because in its raw state it is a very low grade coal and it lends itself to washing, though, and it becomes pretty good quality after it's washed, whereas No. 9 is a little bit better grade of coal in its raw state but it doesn't lend itself to washing. No. 6 is a very high quality stoker coal after it's washed and in its raw state it is a very poor quality coal. No. 12 is a very low grade coal.

4426 Q. I take it the price at which you offer and sell coal varies among other reasons for the quality of the coal, is that right, its inherent quality?

A. That's correct.

Q. And also as to its quality after it's washed?

A. When it is prepared, yes.

Q. Now, you mentioned sizes or types. Could you explain how this affects the price of coal?

A. When you make different size coal, of course, coal comes out of the mines as raw mine run coal, either has to be washed or if it's going to be screened in its raw state it has to be run over screens and come up with double screened coal and you have resultant sized coal.

Q. What is "resultant" coal?

A. Well, it's that portion of the coal that is left after you screen something, like a quarter of an inch or inch and

a quarter by zero down to the bottom size, that's what you have when you get through.

Q. Is resultant coal always the same in size?

A. No, it could be different sizes.

Q. Does it simply depend on how —

A. (Interposing) What size.

Q. How fine you screen the coal?

A. Yes, on what size you are trying to get before you get your resultant coal.

4427 Q. How does the price of coal vary from the standpoint of size?

A. Well, of course, your resultant sizes are your cheapest coals and other than that it depends entirely on quality and the size that you are making, the demand for the coal, for one thing.

Q. Mr. Hicks, you might want to speak up a little louder, I think some in the courtroom are having trouble hearing you with all the outside interferences.

Now, you mentioned washed coal. Will you please tell us what the washing of coal means?

A. Well, what you mean when you wash coal is that it comes out of the mines and goes through a process of washing to eliminate the impurities that can be taken out by washing and which, of course, increases the value of the coal.

Q. Does it cost money to wash coal?

A. Yes, indeed.

Q. Do you lose a part of the weight of coal in the process of washing it?

A. Yes, we do. We lose in some coals much more than others. No. 11 seam of coal, we lose about 25 per cent of it goes out at loss.

Q. You mean if you sold it as an unwashed product there would be by weight approximately 25 per cent

4428 more?

A. That's correct.

Q. Does the availability of transportation have any bearing on sales price?

A. Yes. Your water borne coal normally moves at lower transportation and gives you an opportunity to pick up more price F.O.B. the mines.

Q. Do you have some river mines, so to speak?

A. Yes, we have one.

Q. Do transportation problems have any bearing on the price with respect to railroad mines?

A. Yes, it does. We are given car ratings and when we get 50 per cent of our car ratings of no bills, that is, unbilled coal on the track, then they don't furnish us any more cars beyond 50 per cent, so, of course, we have to close down unless we move that coal.

Q. Is that a common experience?

A. Yes, it is.

Q. In the coal business?

A. Yes.

Q. To have unsold coal in cars?

A. Yes.

Q. How does that happen?

A. Well, when you are running the size coal you just wind up with something normally that you don't have a market for for the product. Of course, that's not
4429 always true but it is at times, it's very difficult to keep your sales balanced as to sizes.

Q. You say that the railroad gives you so many cars or an allotment of so many cars to each mine?

A. Yes. You are rated so many cars per each mine.

Q. You might explain to us what a "no bill" is.

A. That no bill is a bill, is a car of coal that is loaded in which we have no orders for and it's not billed, it's left standing on our tracks.

Q. And depending on your no bill situation the railroad will give you more coals or it won't, is that it?

A. That is correct.

Q. Do you need railroad cars to operate a coal mine?

A. Yes, if we didn't have railroad cars we couldn't operate at all except on the coal that we have on the river.

Q. Can't you put the coal on the ground?

A. No, it's not practical.

Q. Why isn't it practical?

A. Well, it costs you more to put it on the ground and pick it up than we get for it when we sell it.

Q. All right, sir. Now, do all of those factors that we have been discussing have a bearing on the price at which you offer coal?

A. Yes, sir.

Q. Have these factors had a bearing on the price
4430 at which you offered coal in these offerings making up Exhibit P198?

A. What exhibit is that, please?

Q. That is the coal offerings six months before and after a certain date.

A. Yes, sir, that has to some extent.

Q. Mr. Hicks, I wonder if you could illustrate these problems for us by referring to some of the charts in that exhibit and telling us what the prices were and what the sizes were and that sort of thing. Incidentally, do you know how many coal sales agreements there are in this package?

A. No, sir, I do not.

Mr. Rayson: I think I might state accurately that there is more than 300 in there, your Honor, and it would be safe to say we are not going through 300 of them.

A. I have part of these orders listed here.

Q. Well, let's start at those at $2.90.

A. Well, I have one here at $2.90 and that is one-quarter by 28 mesh washed carbon coal.

Q. All right. Let's talk about that for a minute now. Do you sell some carbon sizes that are not washed?

A. No, we don't.

Q. In other words, all carbon coal is a washed
4431 product?

A. Well, not from all mines but it is from our mines, it is from ours.

Q. Now, one-quarter by 28 M, what does that mean?

A. That's mesh, 28 mesh, that means 28 wires to a square inch.

Q. Is this the least size carbon that you produce?

A. Well, the 28 mesh size of coal goes out in your slush pond that we couldn't recover it, it would not be a practical thing, we just lose it.

Q. Is this a going market place for that coal at that time?

A. Yes, sir, that's the top price, I would say.

Q. What is that?

A. I would say that was the top price at that time.

Q. Where did this coal go?

A. It went to Fort Edwards, Wisconsin.

Q. Does this coal have a wide market, this type coal?

A. No, sir, it does not, not that size.

Q. What sort of people can use that coal?

A. The only people that can use that size coal are people that have large generating plants and can burn carbon coal.

Q. All right, sir. Do you find any other in the $2.90 category?

4432 A. No, sir. That seems the only one I have listed in that.

Q. Do you know if there were more than one shipment sent to that particular destination?

A. Yes, sir, there were over 10,000 tons or it wouldn't have been listed during that period.

Q. All right. What about the $2.95?

A. $2.95 coal is Cherry Hill 2-by-0, that's unwashed coal.

Q. Is that coal produced by West Kentucky Coal Company from its mine?

A. No, sir, it's produced by Louisville Gas and Electric at their Cherry Hill mine.

Q. How did you come to be selling that?

A. We are sales agents through our contract with the Louisville Gas and Electric.

Q. Does this coal have a very wide market?

A. No, sir, it does not.

Q. If you will, explain why or what its marketing problems are.

A. Well, it is an unwashed coal and it just would be on the same basis as all No. 9 unwashed coal is, there's a very limited market for the coal as to the plants that would burn it.

Q. I didn't get the last.

4433 A. I said as to plants, steam plants, that would burn the coal in that size or that quality.

Q. Incidentally, is that the coal that you are sales agent for by reason of your contract?

A. Yes, we were at that time.

Q. You were at that time?

A. Yes, sir.

Q. The contract with Louisville Gas and Electric?

A. That's correct, yes, sir.

Q. Is that the company that owns that mine?

A. Yes, sir.

Q. Do they also operate that mine?

A. Yes, sir, they do.

Q. Do you know how much you paid Louisville Gas and Electric for that coal at that time?

A. Well, at the end of the contract, and I don't know, of course, the price changes on that coal every time that we had any change in our wage scales, but $3.60 would have been the price, $3.55, I guess.

Q. So just taking into consideration that what you paid for it and that particular scale, there was a loss difference?

A. Yes, that is correct.

Q. Where did that coal go?

A. Went to Louisville, Kentucky.

4434 Q. I take it it did not go to TVA?

A. No, sir, it did not.

Q. What size was it?

A. That was 2-by-0.

Q. What does that mean?

A. That means from two inches down to the smallest size particle.

Q. Is that the size at which all of the coal is sold from that mine, as far as you know?

A. No, it was not. You could make different size coal, you could make lump coal, egg coal, and then you had 2-by-0 or you could ship as mine run or crushed mine run down to any size.

Q. All right. You have an item in the $3 to $3.25 category. Would you tell us about some of the sales made in that category, Mr. Hicks?

A. Well, we have one there $3, it's the same size, quarter, I mean one and a quarter by 28 mesh, that was $3.

Q. That is the same size as the first coal you referred to?

A. Yes, sir.

Q. Is it the same coal?

A. Same coal.

Q. Where did that coal go?

A. Went to Mogg (spelling) M-o-g-g, Kentucky.

4435 Q. You say you sold that for $3?

A. Yes, sir.

Q. Did this not go to TVA?

A. No, it did not.

Q. Is that a washed coal, you say?

A. Yes, it was.

Q. No. 11 washed coal. Now, did that go to a utility?

A. Yes, it did.

Q. All right. What kind of, what other coals do you find in this $3 to $3.25?

A. Well, in the $3.20 bracket there I have one and a quarter by 28 mesh No. 12 seam coal.

Q. Tell us about that.

A. Well, that coal is washed and, incidentally, it was coal that came from White City, Kentucky, and screened into that size and we shipped to a customer we have at Johnsonville, Tennessee.

Q. Is that the standard market price for that coal?

A. Yes, about it.

Q. All right. Now, I notice you have one in the $3, also at $3.20 that was shipped to Milwaukee, Wisconsin?

A. Yes, sir, that is correct.

Q. What size coal was that?

A. That's one-quarter by 28 mesh size, same size,
4436 but it was heat-dried coal.

Q. All right. Tell us what that process is.

A. Well, heat-dried, we have a heat drier at one of our mines where the coal is run through a heating system and it dries the moisture out of it which, of course, increases the as received BTU on it.

Q. Increases the quality?

A. Yes, it does.

Q. Does it cost money to run coal through a drier?

A. Yes, sir, it does.

Q. What was your price for that coal?

A. $3.20.

Q. All right. I notice you have one at $3.25 that was shipped to Louisville, Kentucky. Would you tell us about that one?

A. That is the same coal identically, heat-dried coal.

Q. Same size?

A. Same size.

Q. You got a slightly better price for it there?

A. Yes, sir.

Q. How did you do that?

A. Five cents? Well, we were just able to get it.

Q. What went into that consideration that you were able to get a nickel more here?

4437 A. Well, this particular firm used very low moisture coal and by running it through this drier, of course, we could reduce the moisture in it.

Q. Incidentally, do you know if we talked about the No. 11 dried that went to Milwaukee, do you know what the freight on that coal was?

A. Four dollars, I believe it was $4.43, I believe, I am not sure about that.

Q. What would the freight on the coal be to Louisville?

A. Freight on the coal to Louisville would be a dollar and seventy cents.

Q. Those difference in freight have any bearing on what you can charge the customer for coal?

A. Well, yes.

Q. Will you explain that, please?

A. Well, of course, the farther you get away from your mine where your higher freight rates are the cost of the coal is increased directly in proportion to the amount of the freight rate.

Q. All right. Now, sir, I notice you have one at $3.30.

A. Yes, sir.

Q. Shipped to Milwaukee, Wisconsin, now what kind of coal was that?

4438 A. $3.30 to where?

Q. To Milwaukee, Wisconsin, I believe it is the third item on the list.

A. Oh, yes. That is the same thing, No. 9 dried carbon.

Q. No. 9 dried carbon?

A. Yes, sir, the same size except the No. 9 seam.

Q. Incidentally, is the No. 9 seam the coal that you are now shipping to the TVA plant?

A. Yes, it is.

Q. Is that a dried coal?

A. No, it is not.

Q. You have an item here of $3.30 to Louisville, Kentucky. Will you explain what that is?

A. Well, that is coal of various sizes but that particular size happens to be a coal where we mix about, as I recall, about 75 or 80 per cent of carbon to one and a half inch coal.

Q. Is that the market for that sort of coal at the time?

A. Yes, that would be for that type of coal.

Q. All right. Well, let's move on here to some of these

others, getting up into the higher prices. I see a sale at $3.85 to a destination at Upjohn, Michigan.

A. Yes, sir, that's coal that has been modified, in
4439 other words, we take out a portion of the fines.

Q. What size does that leave you?

A. Well, what coal comes out of there, of course, leaves a quarter by 28 mesh coal.

Q. What do you mean by "taking out the fines"?

A. Well, in our mine plants we have gauges in the system that move the coal around so that we can open those gates and take a portion of any size out.

Q. Now, is that prepared in any other way?

A. Well, yes, it had already been screened to a one-inch by 28 mesh coal, you see, then we run it over, when we opened the gate on the 28 mesh coal before it's mixed back together and take part of it out.

Q. All right, sir. Is there such a thing as an oil treated coal?

A. Yes, there is.

Q. Do you have with you there any of those?

A. Yes, there's some, yes, down at the bottom there.

Q. What is that?

A. You have a one and a half by a three-quarter inch oil treated, $5.

Q. What does "oil treated" mean?

A. That's to allay the dust.

Q. To what?

A. To keep the dust down on it.

4440 Q. You put oil on the coal?

A. Yes, sir.

Q. Let's get on up to the top price you got here, $7.15.

A. That is coal coming from our No. 6 seam coal, Williams Mines, a very high grade stoker coal used strictly for domestic use, that is, home stoker or small plants.

Q. Do you sell very much of that coal?

A. Yes, we do. I say "much", not by a comparison with

your other mines, it's a small mine, but we sell the output from that one mine.

Q. All right. Now, are these sales that we have been discussing specifically illustrative of all of the various sales in this P198 file?

A. Yes, I think they are.

Q. And is it your testimony that the various sizes and the preparation processes that you go through, do these account for the differences in these sales?

A. Beg your pardon?

Q. I say, do the various qualities that are involved and the sizes and the preparation processes that you go through account for the differences in these sales prices?

A. Yes, sir.

Q. What about your utility sales, are these higher priced coals going to your utilities?

4441 A. No, sir, not as a rule. Some few utilities buy, not your double-screened coal, no, generally speaking, the utilities use as low a price coal as they can get. Now, there's some plants that use washed coals, however, and it goes down to your bottom sizes, though.

Q. All right, sir. Incidentally, has your experience included experiences with utilities?

A. Beg your pardon?

Q. I say, has your sales experience with West Kentucky included experiences with utilities?

A. Yes, it has, that is mostly what I do. I work the utilities in the South and Southeast.

Q. Has that been your assignment for some years?

A. Well, yes, it has for some good many years.

Q. Did you do that even while Mr. Hoffman was looking after the TVA?

A. Yes, sir. I had nothing to do with the TVA during his life.

Q. Did Mr. Hoffman look after any other sales problems for the company?

A. No, that was the only sales. He had a few other

duties, he looked after part of our marine setup, but that was all of the sales that he had, was TVA.

Q. Now, this other man you mentioned, Mr. Bowden, what did he do?

4442 A. Mr. Bowden is the head of our sales department and he is vice president in charge of sales, he worked, is responsible for the Northern territory.

Q. I believe you mentioned still another man who name escapes me.

A. Mr. Rich.

Q. Mr. Rich?

A. Yes, John Rich is a young man that we brought in as kind of an understudy to kind of relief us.

Mr. Rayson: Your Honor, I have asked the witness a number of questions about some of these sales in Exhibit D198. I have a list of these that I have asked him from and I have not mentioned the particular customers involved at the request of the witness. I am going to tender Mr. Rowntree the list of those that I have questioned from so if he wants to question him about them he may, but I would ask him not to discuss the names of the customers unless he feels that it is necessary.

That list, of course, does not have all of the sales agreements in the exhibit, it is merely for illustrative purposes.

Q. Now, will you tell us the kind of coal, first of all, let me ask you this: How many contracts do you now have with TVA?

A. We have five.

4443 Q. Did one of those contracts come to TVA upon TVA's acquisition of some other power plant?

A. Yes, the acquisition of the Memphis Power Plant.

Q. Had you obtained your contract there prior to TVA's interest in that utility?

A. Yes, we had.

Q. So that leaves you —

A. (Interposing) Four.

Q. Four contracts with the TVA?

A. That's correct.

Q. Did you, that is, did West Kentucky obtain those contracts, those four, by reason of bids made to TVA?

A. Yes, sir.

Q. Now, are those contracts what are commonly referred to as the T3, T24, T18 and T6 contracts?

A. That is correct.

Q. What is the total coal that is being shipped under those contracts?

A. Three million eight hundred fifty thousand tons exclusive of the Memphis contract, with it it would be about 4,240,000 tons.

Q. What about these contracts, when were they obtained?

A. They were obtained at different dates. We began shipping on the T3 contract in October 14th of '59 and the T24 the first part of the first million tons on April the 10th of '61 and the second million tons on January 6, '63, and the T18 on April the 1st of '63 and T6 on January the 6th of '64, on the Memphis contract October 1st of 1958.

4444

Q. What is the contract price under these four contracts?

A. $2.89 on one of them and $2.90 on the balance of them.

Q. What kind of coal is shipped on those contracts?

A. That's mine run coal, No. 9 seam mine run coal.

Q. Now, tell us something about the No. 9 seam mine run coal from the standpoint of its quality and so forth.

A. Well, the quality of our bid is based on 15 per cent dry ash and 4½ dry sulfur and 11,400 BTU as received.

Q. Is that a standard price, as far as you are concerned, for that coal?

A. Beg your pardon?

Q. I say, is that a standard price, as far as you are concerned, for that coal?

A. Yes, sir.

Q. Have you offered that to others at that price?

A. Yes, we have.

Q. What types of consumer have you offered that coal to at that price?

4445 A. We offered it to the utility customers for steam generation just similar to TVA.

Q. All right, sir. Where does that coal come from generally?

A. Generally from our Pleasant View Mine and our East Diamond Mine, Madisonville, Kentucky.

Q. Where did it come from when you first obtained the 1959 contract?

A. It came from our Pleasant View Mine.

Q. What was the situation at the Pleasant View Mine at that time?

A. We had worked out in the No. 11 seam of coal, which we were operating in, and we had to drive our slope on down 90 feet and we went in on the No. 9 seam.

Q. Is it an advantage or disadvantage for a company, as far as production is concerned, to be able to go down from one seam to another?

A. Well, of course, it is much cheaper, you already have all of your plant, your preparation plant and your plant for loading, you have all your tracks, all you do is just drive the slope down and develop your mine.

Q. Do you recall when you had worked out of the No. 11 at Pleasant View?

A. I have that. In February 19, 1959, we still had a little No. 11 coal coming in after that but for all practical

4446 purposes we worked both seams of coal for a few months and mixed them together. On October the 14th, 1959, we went into the 9 altogether.

Q. All right, sir. Does No. 9 have a market other than the utility market?

A. Not in that type of preparation, no, sir.

Q. Does it have a volume market with preparation?

A. Beg your pardon?

Q. Does it have a volume market with preparation?

A. No, it hasn't with us. We had tried to sell it as washed

coal and the preference was for No. 11 coal because it was the lowest ash coal and a different type coal.

Q. How did you arrive at that price?

A. Well, we arrived at that price by coming in with our operating people and our sales people and our accounting people and management and we decided that we could profitably mine the coal at that price if that's what it would take to get business with the TVA, at least we thought that is what it would take.

Q. All right, sir. Was it your intent to depress the TVA market by offering that at $2.90?

A. No, sir.

Q. Do you know, as a matter of fact, how that offering compared with other offerings being made to TVA at the time?

4447 A. Yes, I do. When we offered it on the first contract we got on it there were four awards made and we were next to the highest.

* * * * * * * * * *

Q. Which offering were you talking about?

A. That was on the T3 contract.

Q. Was that in 1959?

A. Yes, I think that was the Requisition No. 27, I believe.

Q. While we are talking about the comparative advantages of these bids on which awards were made, the $2.90 contracts, how did the others stand?

A. Well, on T24 there were 14 awards made, and I am talking about only to the western plants now, I am not including the other plants because we couldn't get into them.

Q. Yes.

4448 A. There were 14 awards made and we were the highest of the 14.

Q. All right, sir.

A. In the T18 contract, which was the next one, there were 10 awards made and we were the highest of those, and in T6 there was 7 and our coal was priced the highest in that case.

Q. All right, sir. Did you attempt to offer this coal after your 1959 award to TVA on bids that were not successful?

A. Yes, we did.

Q. Why were you trying to sell more of this $2.90 coal to TVA?

A. Well, because we had a mine there that was capable of producing much more coal than we were producing and we wanted to get it up to its maximum production.

Q. All right, sir. Now, you mentioned the East Diamond Mine. Did some of this coal eventually come from the East Diamond Mine?

A. Yes, sir, we had the same thing at the East Diamond that we had at the Pleasant View. We worked out the No. 11 seam and then we closed the mine down for a period and then re-opened it, of course, on No. 9.

Q. When did you work out of the No. 11 in East Diamond?

4449 A. On December the 23rd, 1960.

Q. You say you closed the mine at that time?

A. Yes, we did.

Q. Did you have any market for the No. 9 from East Diamond at this time?

A. No, sir, we did not, except TVA, of course.

Q. When did you re-open East Diamond?

A. July the 25th, 1962.

Q. Where did the coal go from East Diamond at that time?

A. It went to TVA.

Q. Had you moved down from the No. 11 or put a slope down, or whatever you do from the No. 11 to the No. 9 prior to the time you got the TVA contract?

A. No, sir, we did not.

Q. Is it good mining for a coal company to have to shut down a mine, Mr. Hicks?

A. No, sir.

Q. Why isn't it?

A. Well, when you shut it down you just have that much less coal to spread your overhead costs over.

Q. When you shut down East Diamond, did you have a pretty good investment there in improvements?

A. Yes, we did.

Q. What sort of improvements have you got, what
4450 sort of construction do you have around the mine?

A. Around the mine you have your plant, all of your sizing equipment which, of course, we do not use in the TVA except to trace coal down, but we had the plant where all we had to do was just to get down to the coal and start running the plant. We have all of our tracks that would have to be built if we hadn't have had it, which you have to have tracks to hold your empty cars and track to hold your loaded cars and after they come through the plant.

Q. What do you do when you shut down a mine, do you just walk off and leave it or is there anything that you have to do while it is there?

A. Well, you have your choice of one or two things, you have either got to keep it pumped out and keep it in good condition, if you don't, of course, there will be nothing there when you go back to re-open, you have got to pull everything out of it if you are going to let it fill up with water.

Q. I take it you kept East Diamond pumped out after you closed it?

A. Yes, sir, that's right.

Q. Is that an expensive proposition?

A. Yes, it is.

Q. What is involved in keeping a mine pumped out?

A. Well, it involves keeping a mine pumped out,
4451 you have got to have men, of course, to see that it is kept pumped, you have to have inspections, men inspecting the mines to see all the time — you have to have electricity, you have to have pumps operating.

Q. Do you recall when West Kentucky Coal Company acquired the Nashville Coal Company?

A. We acquired them in September, we actually took

harge of Nashville Coal Company in October the 1st, 1955.

Q. How many mines did you acquire from that company?

A. We had five.

Q. Can you name them for us?

A. We had Uniontown, Stony Point, Fies, Crescent and Williams.

Q. Did you have to close any of those mines?

A. Yes, we closed Stony Point.

Q. Did you work it out?

A. No, we did not.

Q. Do you remember when you closed it out?

A. We closed it January the 8th, 1957.

Q. Why did you close it?

A. The cost of operating it was too high.

Q. Did you have to close any other mines?

A. Well, we closed at least three—we didn't own the mine, Kirk Mine, that was the Nashville Coal Company mine that they had on a sales agreement, we had to
452 close it.

Q. What for?

A. There was no market for the coal.

Q. All right. Were you closing any West Kentucky mines during that period? Incidentally, how many coal mines did West Kentucky Coal Company have at that time?

A. West Kentucky had, we had five.

Q. Have any of those mines closed since 1955?

A. Yes, sir.

Q. Which ones?

A. Well, I have given you East Diamond we closed, which was re-opened, we closed Heckler Mine in '54, we closed Homestead Mine in 1958.

Q. Why did you close Homestead?

A. We closed Homestead, they worked out the coal in that lease.

Q. All right, sir.

A. Closed Pleasant View, we never closed it but we re-

opened it in the No. 9 coal, then we closed it down in May 29 1965, this year.

Q. Why did you do that?

A. We got into working conditions that were just so high cost we didn't feel that we could operate on it.

Q. Had something happened in the meantime?

A. Well, yes. We had a fire in the mine in the latter part of 1963 and then we had run into very unfavorable
4453 working conditions in the mine, such as bad top and looked like a losing proposition, so we pulled out of it.

Q. I take it you ceased then shipping any of this coal to TVA from that mine?

A. Well, the only coal we have, still have a little coal that is brought in there strip and carried through the plant, we still ship that, some of it to TVA.

Q. But as far as the underground working mines?

A. Yes, sir, the underground was completely closed.

Q. Had you worked that mine out there?

A. Beg your pardon?

Q. Had you worked it out?

A. No.

Q. Is there more coal there?

A. Yes, we still had some coal there.

Q. Where is the bulk of the coal coming from then on that?

A. Well, the bulk of the coal is coming now from East Diamond and Shamrock and we have just recently on the Kingston Mine that we had closed down in 1957, I believe.

Q. All right. Did West Kentucky Coal Company acquire many coal contracts from Nashville Coal Company?

A. Yes, we did.

Q. Do you know offhand whether it got any contracts which had not been filled from TVA or with TVA?

4454 A. No, none that we hadn't completed since that time.

Q. Did it have some in effect at that time?

A. Yes, it had, I believe it had one or two, I am not sure about that.

Q. All right. Did it have any others?

A. Yes, it had other contracts.

Q. Did it have a contract with the Louisville Gas and Electric Company?

A. Yes, it did.

Mr. Rayson: I believe that is Exhibit P190, your Honor.

Q. How much coal were you selling to Louisville Gas and Electric Company under that contract?

A. Oh, approximately a million tons a year, some years it was a little better and one year a little less.

Q. Now, this is the contract that you acquired from Nashville?

A. Yes, sir.

Q. What price were you getting for that coal?

A. Well, when the contract ended we were getting $3 and—what price were we getting for the coal?

Q. Yes, sir.

A. $3.55 when the contract ended.

Q. Was that a fixed price throughout the term?

4455 A. Yes, it was a fixed price, it was changed from time to time as we had wage changes, that was all.

Q. Well, now, was the $3.55 what you were getting for the coal at the end of the contract?

A. Yes, sir.

Q. Do you know what it had been over the other years that you had been serving that contract?

A. Well, yes, the prices have changed on it several times. When we took over the contract, we were getting $3.40 and it was changed to $3.20 and then to $3.33 and $3.40, $3.50 and $3.55.

Q. Is that a pretty good price for that coal?

A. Yes, it was.

Q. I show you a chart purporting to show the amount of coal shipped to Louisville under that contract after it

was acquired by West Kentucky Coal Company. Does that show the amount of coal sold?

A. Yes, according to our records that is correct.

Q. Do you have an extra one of those charts, Mr. Hicks?

A. Yes, I do. I have that one. I don't have but one.

Q. Well, I wonder if we might borrow it for the time being.

We offer this as an exhibit to Mr. Hicks' testimony.

4456 The Court: What is the exhibit?

Mr. Rayson: That is an exhibit showing coal shipped to the Louisville Gas and Electric Company on the Nashville Coal, Inc., contract.

The Court: Exhibit 385.

The Witness: I have another one.

(The chart referred to above was marked D385 and received in evidence.)

Mr. Rayson: You may wish to look at this as we talk about it.

Q. Now, before we discussed this exhibit, Mr. Hicks, did you, under this contract you acquired from Nashville, have any responsibility with respect to the Cherry Hill Mine?

A. Prior to this contract?

Q. No, sir. After you acquired this contract.

A. Oh, yes, after we acquired this contract, that was in the contract, we were sales agent for the Cherry Hill Mine. we had to take a minimum tonnage under the contract.

Q. Do you know what that was?

A. Two hundred thousand tons, which later was changed to 400,000 tons.

Q. Do you know when that was changed?

A. No, sir, I don't right offhand.

Q. Was it 1958? Would 1958 be approximately

4457 correct?

A. I believe that was right.

Q. All right. Where did this Cherry Hill coal go by and large?

A. To the Louisville Gas and Electric Company.

Q. Does this chart show the amount of that coal that was shipped from the Cherry Hill Mine to Louisville Gas and Electric Company?

A. Yes, it does.

Q. Is that the figure in the first horizontal column?

A. That is correct, yes, sir.

Q. Year by year. So you shipped, for example, 359,000 tons from Cherry Hill to Louisville Gas and Electric in 1956?

A. That is correct.

Q. How much did you receive for that coal from Louisville Gas and Electric?

A. You mean how much did they charge us for the coal?

Q. How much did they charge you for it?

A. $3.70 for the first 200,000 tons and then the price went down five cents, which would have made it $3.60.

Q. Now, was this 359,000 a part of the 1,186,000 tons that you shipped to Louisville Gas and Electric?

A. Yes, sir.

4458 Q. Is that shown in the third horizontal line from the bottom on this chart?

A. That's right.

Q. When you shipped this Cherry Hill coal to Louisville Gas and Electric, how much did they pay you for it?

A. They paid us 15 cents less than we charged them up to 200,000 tons and then it was 10 cents less.

Q. Did West Kentucky operate that mine?

A. No, we did not.

Q. Did you actually do any of the physical work required in shipping the coal from the Cherry Hill Mine to the Louisville Gas?

A. No, sir, we did nothing.

Q. You did bill them for it, I take it?

A. Just billed them for it, that's correct.

Q. Now, I notice in the fourth horizontal line here on this chart, Exhibit 385, you showed Cherry Hill coal shipped

to accounts, all accounts other than Louisville Gas and Electric and TVA.

A. Yes, sir, that's correct.

Q. I take it then you did sell some of this coal to other people?

A. That's right.

Q. Now, is one of such sales the sale that was made in 1961 that we discussed earlier this morning?

4459 A. That's right, yes, sir.

Q. Now, in connection with that sale you said that you sold that coal for $2.95?

A. Yes, sir.

Q. How much did Louisville Gas and Electric charge you for that?

A. That would be $3.55, no, it would be $3.65 or $3.70.

Q. Was there any compensating factor in that or was that just a dead loss in that, Mr. Hicks?

A. Yes, we had the contract for the coal that we shipped to them from our mines and other mines where we purchased coal at a very attractive price and a portion of coal that is being shipped to Cherry Hill was very small, well, it wasn't small but it was enough, it was small enough that it was very profitable to us.

Q. Let me see if I understand you. Did you ship other coal from your other mines?

A. Yes.

Q. To the Louisville Gas and Electric Company?

A. Yes, we would ship it from any mine we had. We shipped most of the Pleasant View, as much as we could from Pleasant View or from any mine that we wanted to ship it from.

Q. Well, when you sold coal from Cherry Hill to

4460 an account other than Louisville Gas and Electric Company, would you ship more or less of your coal from your other mines to Louisville Gas and Electric Company?

A. We would ship more because the more coal you sold

from Cherry Hill to other places there would be more coal going into Louisville Gas and Electric and we would ship from our own mines.

Q. All right, sir. Did it make any difference financially to West Kentucky Coal Company then whether you were shipping Cherry Hill coal to Louisville Gas and Electric or other customers?

A. Well, no, it didn't.

Q. Why did you sell the Cherry Hill coal to others when you could?

A. Well, because they wanted us to, mainly.

Q. Who wanted you to?

A. Louisville Gas and Electric.

Q. Do you know why they wanted you to?

A. No, sir, I do not.

Q. Now, I notice that in 1960, according to Exhibit No. 385 in the fifth column horizontally from the top, you sold 51,999 tons to TVA.

A. That is correct.

Q. Now, what price did you receive from TVA for that coal?

4461 A. We received $2.90 plus premium or penalty.

Mr. Rowntree: We object to that because the price is in the exhibit, the supplement to the contract authorizing application of the Cherry Hill coal —

Mr. Rayson: (Interposing) All right. If your Honor will indulge me just a minute I will see if I can find it among all of these papers.

Mr. Rowntree: May I just ask the witness a couple of questions?

Mr. Rayson: You may.

Mr. Rowntree: Mr. Hicks, do you recall whether a supplement was put out under the contract authorizing application of Cherry Hill coal to the contract?

The Witness: Yes, sir, I am sure of that.

Mr. Rowntree: Do you recall that the price was $2.85?

The Witness: $2.85, yes, sir. I beg your pardon, did I say $2.90?

Mr. Rowntree: $2.90.

The Witness: I am sorry, $2.85 is correct.

Mr. Rayson: I don't know whether that is in the record or not, but I have found mine.

Q. It was $2.85?

A. $2.85 was correct, I am sorry.

Q. Would there be a plus or minus or quality
4462 adjustment on that?

A. Yes.

Q. In any event, that was the 51,999 tons?

A. Yes, sir, that's right.

Q. How much were you charged by Louisville Gas and Electric for that coal?

A. We were charged, we were charged on the basis of the $3.70 price, we would have been charged $3.55 or $3.60 after the 200,000 tons had been shipped from that mine that year.

Q. All right. That is roughly a 75 cent difference in what you received, discounting whatever quality adjustments there were, and what you paid for it. Now, did you lose money on that transaction?

A. No, sir.

Q. Will you explain to us why you didn't lose money?

A. Well, because the coal that we shipped from Cherry Hill was going to Louisville Gas and Electric Company and when we moved it to TVA then we took the coal from Pleasant View Mine, which would have gone to TVA, and shipped it to the Louisville Gas and Electric, so the dollars and cents were the same thing.

Q. The same thing. All right. Did the same thing happen with respect to the tonnage that you shipped to Louisville Gas and Electric in 1962, 137,063 tons?

4463 A. You mean to the TVA?

Q. Yes.

A. Yes, sir.

Q. Did you lose any money on that?

A. No, sir, the same thing.

Q. Well, is this your testimony, that you just shipped more of your own coal to —

A. (Interposing) Louisville Gas.

Q. Louisville Gas and Electric?

A. By exactly the same amount that we shipped to TVA.

Q. All right. Could you sell this Cherry Hill coal in volume to anybody else?

A. No, sir.

Q. I notice you didn't sell any of the Cherry Hill coal to TVA in 1961.

A. Yes, that is correct.

Q. Do you know why you didn't?

A. They wouldn't take it.

Q. When did your Cherry Hill contract expire, Mr. Hicks?

A. March 1, 1963.

Q. Were you interested, I don't mean Cherry Hill, I mean the Louisville Gas and Electric?

A. Louisville Gas and Electric, yes.

4464 Q. Were you interested in continuing to sell coal to Louisville Gas and Electric Company?

A. Yes, we were.

Q. Did you make an effort to continue to sell them coal?

A. Yes, sir.

Q. Did you offer them coal at any particular price?

A. Yes, sir.

Q. What offer did you make them?

A. Well, we made them several offers, as I recall. We made them an offer of about $3.40, I believe, and then $2.90.

Q. Did the $3.40 have any frills or any attachments to it?

A. No, sir, it did not. It would be the same basis that we had with the present contract except we would reduce the price of that and, of course, Cherry Hill price would be reduced to us accordingly.

Q. Well, was your offer to sell them coal at $3.40 based on your willingness to take more of the Cherry Hill coal?

A. We would have taken all we could, we would have taken 400,000 tons of it, yes, we agreed to that.

Q. Did you make them an offer to sell them, come under an agreement by which you would be relieved of the
4465 responsibility of taking Cherry Hill coal?

A. Yes, sir.

Q. What was that offer?

A. $2.90.

Q. What kind of coal was it?

A. It was the same coal that we was shipping to TVA from Pleasant View and East Diamond, exactly the same.

Q. Did you get the business?

A. No, sir, we did not.

Q. Do you know whether you were underbid?

A. Yes, I understand we were.

Q. Do you know who got the business?

A. Peabody Coal Company.

Q. Are these prices that you are referring to prices at your mine?

A. F.O.B. mine, yes, sir.

Q. Mr. Hicks, I notice that in the last year or two you have bid successfully a number of times on the TVA spot market.

A. Yes, sir, that is correct.

Q. Will you explain generally for us what those bids were?

A. Well, they were on carbon coal, resultant size coal, one-quarter by 28 mesh, mostly.

Q. How did you come to have carbon coal?

4466 A. We were running double-screened coal and this is what we got as a result of that.

Q. Is this something you have all of the year around carbon coal?

A. Well, we have it more in the winter months than we do in the summer months.

Q. Why is that?

A. Because we are running coal for domestic application, for sale to dealers, of course, they buy no coal with carbon in it, it's all double-screened coal generally.

Q. Is this the bulk of the coal that is going to TVA on this spot market?

A. Yes, sir.

Q. How do you go about pricing that coal on the spot market?

A. Well, the way we have gone about pricing the spot coal to TVA, I am safe in saying the latter years we called TVA and asked them what they paid for the coal the week before.

Q. Is this public information?

A. Yes, sir.

Q. What do you do with that information?

A. Then, well, we take the highest price that they had paid the week before in most instances, I think practically all, and bid it on the coal.

4467 Q. All right. Have you at any time, Mr. Hicks, discussed or collaborated with any other company in determining what prices that you would sell your coal to TVA?

A. No, sir.

Q. In any of your bids have you sought to depress the TVA market?

A. No, sir.

Q. Have you ever discussed any sales matter with any representative of the United Mine Workers?

A. No, sir, I have not.

Q. Do you have any knowledge that any official of West Kentucky Coal Company ever discussed any of these matters with the United Mine Workers?

A. No, sir.

Mr. Rayson: Cross examine.

CROSS EXAMINATION

By Mr. Rowntree:

* * * * * * * * * *

4481 Q. Well, let me ask you this: Did you, from 1953 on, receive any pressure from stockholders with respect to the policies of the company on selling coal?

A. Never had a single one.

Q. Did Mr. Cyrus Eaton ever write any memos or give any lectures to the sales representatives of West Kentucky after he became chairman of the board?

A. No, sir. We, of course, talked with Mr. Cyrus Eaton. Mr. Cyrus Eaton has never gave us a single instruction on anything with reference to sales that I know anything about.

Q. So far as you know he was satisfied with the sales policies of West Kentucky Coal Company?

A. Yes, sir.

Q. During the period of the 1950s after he became chairman of the board?

A. Yes, sir.

Mr. Rowntree: That's all.

REDIRECT EXAMINATION

By Mr. Rayson:

Q. Mr. Hicks, do you know if West Kentucky Coal Company coal is now going to Widows Creek Steam Plant?

A. Yes, it is now, yes.

Q. Do you know when it started to go there?

4482 A. May 28, 1964.

Q. May 28, 1964?

A. Yes, sir.

Q. Do you know if any coal whatsoever of West Kentucky Coal Company was ever shipped to Widows Creek Steam Plant prior to that date?

A. I have looked diligently through our records and

asked everyone that would have known anything about it and no one says that we have shipped any coal. I checked with TVA and they say that none of our coal was shipped during that period or any time.

Q. Does that include in the fall of 1955?

A. Yes, sir, that includes any time up to 1964.

Q. It was none of your coal shipped there in 1955?

A. No, sir.

Q. Did you handle this Memphis contract, by the way?

A. Yes, sir, I did, sir.

Q. When was that?

A. We got the contract in 1958, October, begin shipping in October.

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Q. Were there many bidders on that contract?

A. There was, as I recall, this is just a guess, 10.

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4483 Q. How many people got that?

A. Three.

Q. Do you know how you stood, how your bid stood in relation to the others?

A. It was the highest one of the three.

Q. How did you arrive at your price at that time?

A. We just used our regular price of Uniontown coal plus the cost of transportation, which had been quoted us, and then we decided that everyone else knew, of course, what our price probably would be and we reduced it two cents from our F.O.B. mine price.

Q. Did you discuss that bid with any other bidder prior to submitting that bid?

A. No, sir, I did not.

Q. Did you personally handle that, Mr. Hicks?

A. Yes, sir.

Q. Had you ever heard that there was a West Kentucky

Coal Company barge or something that came through the Tennessee River in 1955?

A. Yes, sir, I have heard that.

Q. Do you know whether or not that was true?

A. It certainly was not true, not a barge owned by the West Kentucky Coal Company at that time.

Q. Do you know if West Kentucky disposed of any
4484 barges?

A. Yes, sir, we disposed of some small barges, we sold them to the Union Electric Company and I understand that they had sold them, but no barges of ours come down in '55.

Q. All right. Where is your magazine here, the last exhibit? I am going to hand the witness Exhibit P386 and ask him if he will comment on the prices that Mr. Rowntree inquired about. What prices are shown on there, what type of coal is shown there?

A. This is all double-screened, except the screenings, it shows screenings on here at a price of $4.50.

Q. Is it your opinion that that is also washed coal?

A. Yes, sir, it is.

Q. Do you know whether or not that represents the market for that type of size and washed coal?

A. Let me put it this way, we would be glad to sell it at somewhat less than these prices.

Q. In any market that you serve?

A. Yes, sir.

Q. Does that compare with the No. 9 coal that you are selling to TVA?

A. No, sir, it does not, the coal we are selling to TVA is mine run coal, unwashed, has no preparation at
4485 all except to crush down to 6-inch top size or if we wish, on some of our contracts we can screen it after that and take certain sizes off of it.

Q. Approximately how many utilities do you serve?

A. I believe there is approximately 15, I think that is correct, about that.

Q. Were all of those utilities offered that coal?

A. Well, I don't know that all of them were, a good many of them.

Q. At the same price?

A. Same price we asked TVA, yes, sir.

Q. All right. Mr. Rowntree also asked you about your price back in the early '50s. I wonder if you would briefly describe to us any changes that occurred in your business during that period.

A. Well, during the early '50s and the late '49s, of course, we had a tremendous amount of railroad fuel which represented roughly 25 per cent or better of our total sales and the retail dealer business about the same thing, which represented about 50 per cent of our entire production of coal, which brought very good prices.

Q. What happened to that business?

A. Well, the railroads all went to diesels and the retail business gas and oil has replaced coal today.

Q. Go ahead.

4486 A. Today less than 7 per cent of our coal is going for retail applications and less than 1 per cent for railroads.

Q. Do you know if your sales declined during that period?

A. Yes, I would say it was declining some, I am sure.

Q. Mr. Rowntree asked you about some sales that were made to TVA during the '50s and also whether or not you were the largest or one of the largest shippers to TVA during that period.

Do you know how your company ranked during the '50s in sales to TVA?

A. Yes, sir, I do. Starting in 1954 we were 9.6, that was our percentage of the TVA purchases of coal that year.

Q. Well, Mr. Hicks, rather than read those, I hand you a chart and ask you if you can identify that?

A. Yes, sir, that's the same one I have here.

Q. What does that chart show?

A. The chart shows we went from 9.6 down to 4.9 in 19 and then in 1964 we were back up to 16.2.

Q. Let me ask you this, does it show the total amou of coal purchased by TVA each year?

A. Yes, sir, each year and that part furnished b
4487 West Kentucky Coal Company.

Q. In tons and in terms of percentage?

A. That's right, yes, sir.

Q. Would you introduce that as an exhibit to your tes mony?

The Court: Exhibit 387.

(The chart referred to above was marke D387 and received in evidence.)

Mr. Rayson: Your Honor, this exhibit does show the tota TVA receipts beginning with 1952, the tonnages shipped b West Kentucky and Nashville Coal Company mine and th percentage that those shipments represent of the tota TVA market.

The percentages, I might just read them in. They were 9.6 per cent in 1954; 9 per cent in '55; 7.4 per cent in '56; 4.9 per cent in '57; 6.4 per cent in '58; 7.5 per cent in '59; 8.3 per cent in '60; 9 per cent in '61; 10.4 per cent in '62; 15.3 per cent in '63; and 16.2 per cent in '64.

The volume of tonnages ranges from a low of 963,000 tons, leaving off the odd tons, in 1957 to a high of three million seven in 1964.

Q. Mr. Rowntree also asked you about the sales made by TVA or made by West Kentucky Coal Company to TVA during the '50s, Mr. Hicks.

4488 To the extent that you are familiar with those sales, do you know whether or not West Kentucky was trying to get the best price that it could from the TVA?

A. Yes, sir.

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4490 J. W. McMAHON,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rayson:

Q. Would you state your name, please?

A. J. W. McMahon.

Q. Where do you live, Mr. McMahon?

A. Madisonville, Kentucky.

Q. Are you presently employed?

A. I am retired.

Q. What was your position prior to your retire-

4491 ment?

A. Vice president and controller.

Q. Of what company, sir?

A. West Kentucky Coal Company.

Q. How long had you worked for West Kentucky Coal Company?

A. Since 1926.

Q. During that period of time what has been the nature of your work?

A. I had come up through the accounting department as general credit manager, controller, treasurer, on to vice president and controller.

Q. When did you retire, sir?

A. May 1 this year, 1965.

Q. Are you familiar with the operating experience of West Kentucky Coal Company and its subsidiaries from 1950 to the time of your retirement?

A. As far as the accounting department is concerned, yes.

Q. Mr. McMahon, the annual reports of West Kentucky Coal Company have been introduced in evidence as beginning with the report for the year 1950, as Plaintiffs' Exhibit

179. All these appear to bear the number 179, all of these annual reports through the year 1961.

It has been pointed out that West Kentucky Coal Company had a profit of $5,645,000 in 1950 and that it
4492 had a decline in profits during the several years following. I wonder if you would explain what that situation was and how the decline came about?

A. Well, the decline came about principally by loss of sales tonnage. The sales tonnage continued to decrease due principally to the fact that the railroads were dieselizing, they had been taking as much as 25 per cent of our production, also gas and oil were making inroads on our business, they were taking over most of the retail business. Both of these pieces of business were at fairly high price, a good realization in those years. That is one of the principal reasons for the decrease in the net income before taxes.

Q. I have here a paper which purports to show by year beginning with 1950 and ending with 1964 the tons produced by West Kentucky Coal Company, tons of coal sold by that company and its subsidiaries, its net income before income taxes, and also another column showing the national production in terms of tons.

I hand you this paper and I will ask you if you prepared that paper and if it shows the information as stated?

A. Yes, sir, it shows the information you have stated and I prepared it.

Q. All right, sir. Would you introduce that as an
4493 exhibit to your testimony?

The Court: Exhibit 388.

(The chart referred to above was marked D388 and received in evidence.)

Q. Mr. McMahon, this shows that your profits declined from $5,645,000 in 1950 down to $1,441,000 in 1955. Can you tell us what your sales were in those years?

A. Yes, sir.

Q. In dollars?

A. Sales dollars?

Q. Yes.

A. 1950, $26,181,000; 1951, $22,090,000; 1952, $21,664,000; 1953, $18,683,000; 1954, $15,632,000; 1955, $17,781,000.

Q. All right, sir. Now, during those years, I believe this exhibit shows your production in each year from 1950 to 1954 declined, is that correct?

A. No, sir. You will notice there in 1952 there was a slight increase and then it continued on a decrease again.

Q. When did you acquire Nashville Coal Company?

A. September 13, 1955.

Q. What mines did you acquire at that time?

A. Fies, Crescent, Williams, Stony Point and Uniontown.

4494 Q. Are you familiar generally with the wage rate paid under the United Mine Workers contract?

A. Yes, sir, I couldn't quote them right here but I know what they are.

Q. Do you know how the wage rates paid by the Nashville Coal Company compared with the wage rates of the United Mine Workers contract?

A. They were the same.

Q. Do you know whether the day's work of the Nashville Coal Company employees were the same as the day's work of employees under the United Mine Workers contract?

A. Well, they were practically the same. The number of days worked, of course, was in accordance with how many orders you had and whether you could operate the mines or not.

Q. What about the hours in the day?

A. No.

Q. Will you explain the difference, if there was a difference?

A. Before West Kentucky Coal Company purchased Nashville Coal Company, Nashville mines were working a

full eight hours and they were not paying the travel time. After West Kentucky Coal Company purchased Nashville, it was necessary that we go on a travel time basis. They were being paid for their travel time, prior to that

4495 they were not being paid for travel time.

Q. Do you know under the United Mine Workers agreement if travel time was part of the compensible time?

A. That's right.

Q. Did you make a study to determine the amount of cost that it cost West Kentucky to make that change?

A. I did.

Q. Can you tell us what the difference in cost was in terms of tonnage?

A. The difference in cost is .1916, nineteen and sixteen-hundredths cents per ton.

Q. Nineteen plus cents per ton?

A. Yes, that's right.

Q. In making that computation, how much travel time did you consider?

A. We used one hour.

Q. Is that a conservative estimate of the amount of time?

A. That is a conservative estimate, it runs under that in some mines and runs over that in others, just an average we used one hour, that's 30 minutes in the morning and 30 minutes in the afternoon.

Q. Did you find the mines that you acquired from Nashville Coal Company were profitable to operate?

A. No, sir.

4496 Q. Will you explain why?

A. Well, we found them in pretty poor shape, it was necessary that we spend quite a bit of time and money in rehabilitating the mines.

Q. Did West Kentucky Coal Company have any significant long-term debt prior to its acquisition of Nashville Coal Company?

A. It had none.

Q. Now, you have already, you have told us what the profits were prior to your acquisition of Nashville Coal Company, that appears on the Exhibit 388, that is, the first full year after your acquisition of Nashville that your net income was $2,150,000. Do you know if that was the combined income of Nashville?

A. No, sir, that was West Kentucky Coal Company only.

Q. Do you know what Nashville's income was?

A. Nashville had a loss of $604,057.

Q. To what do you attribute that loss?

A. Well, one thing, of course, was high mine costs and we had not been able to get the mine costs down.

Q. All right, sir. As a result of that did you take any action, did you close any mines?

A. Yes, sir, we closed the Stony Point Mine on January 8, 1957. That was the only Nashville mine that we
4497 closed.

Q. Why did you close that mine?

A. Because of high cost of production, we were unable to sell the coal and make any kind of profit and it didn't look as if we were going to be able to.

Q. Do you have any information showing the combined income of Nashville and West Kentucky from the time of the acquisition forward?

A. Yes, sir.

Q. Would you state what it was in each year, please?

A. In 1956, $1,591,000.

Q. That is the combined income?

A. That's the combined income.

The Court: Net?

The Witness: Yes, sir, that's net before taxes.

Q. All right. What about 1957?

A. 1957, $1,376,000; 1958, a loss of $368,000.

Q. All right.

A. 1959, a profit of $436,000.

Q. You are rounding these figures, I take it?

A. Yes, sir, I am rounding them.

Q. All right.

A. 1960, a profit of $726,000; 1961, a profit of $204,000; 1962, a profit of $328,000; 1963, a profit of $332,000; 1964, a profit of $2,147,000.

4498 Q. Did you have interest payments following your acquisition of the Nashville Coal Company, Mr. McMahon?

A. Yes, sir.

Q. I hand you a paper and I will ask you if this paper shows year-by-year the interest payments made on West Kentucky's long-term debt?

A. It does.

Q. Are those the same figures shown in the annual reports?

A. Same figures that are shown in the annual reports.

Q. All right. Would you introduce that as an exhibit to your testimony?

The Court: Three hundred eighty-nine.

(The chart referred to above was marked D389 and received in evidence.)

Q. What was the year of your highest interest?

A. Our highest interest year was 1958.

Q. What was the amount of the interest?

A. $1,027,532.

Q. Was that the year in which you show an operating loss?

A. That's right, yes, sir, that's the year we show an operating loss of $367,000.

Q. All right. Were you also during those years making payments on the principal of that obligation?

4499 A. Yes, sir.

Q. Can you tell us how much was paid over that year from 1955 through the early '60s?

A. I think I am going to have to dig a little deeper for that. At the end of 1957 the indebtedness was a total of $21,601,333.

Q. Is that all long-term debt?

A. That's all long-term debt.

Q. That's all of the long-term debt that the company had?

A. That's all of the long-term debt that the company had.

Q. All right, sir.

A. During 1958 payments totaled $3,441,303; during 1959, payments totaled $3,648,801.

Q. Is that the payment on principal?

A. That's payment on principal. During 1960 payments totaled $3,788,456; during 1961 payments totaled $2,481,963; during 1962 payments totaled $2,500,620, however, during that year we borrowed an additional $3,000,000; net payments during 1963 were $740,190. I don't have the 1964 figure available.

Q. Now, with the exception —

A. (Interposing) Those accounts were taken to our Huntington office, Island Creek took them out of the Madi-
4500 sonville office. These figures are available right there in the annual report, you can check them right through there.

Q. With the exception of the $3,000,000 that you borrowed, were these payments made out of the income and cash flow of the company?

A. They were made out of the income and cash flow of the company with the exception of the $10,000,000 that was borrowed from the Irving Trust Company and a group of New York banks. Now, no, wait a minute, I said "group of New York banks", they were not New York banks, Irving Trust is the only one in New York, the others are scattered in Washington, D. C., Louisville, Kentucky, Evansville, Indiana, and Nashville, Tennessee.

Q. The annual report would show but did you have any interest payment of any significance during the first five years, Mr. McMahon?

A. We had none.

Q. Did West Kentucky Coal Company borrow any money from the United Mine Workers at any time?

A. Yes, sir, we borrowed $900,000.

Q. Will you explain when that was? Will you state when that was?

A. That was in 1961.

Q. What were the circumstances of the company
4501 at that time?

A. Well, we found ourselves badly in need of cash and had been talking to Irving Trust Company at the time attempting to get our loan rescheduled in order that we would have a sufficient amount of cash, particularly to pay Potter as those payments were running over $2,000,000 a year.

Q. All right, sir.

A. Irving Trust refused to go along with us.

Q. Was the company threatened with serious litigation at this time?

A. What is that?

Q. Was the company threatened with serious litigation at that time, pending litigation?

A. Yes, we were in litigation with Tampa Electric.

Q. All right, sir. Did you then seek to borrow money from the United Mine Workers?

A. We did. We found ourselves short of cash and I withheld payment on the 10 cents a ton to the Welfare Fund for a month or two, thinking that that would help us to get by on what cash we needed.

After that it ran up to almost $900,000 that was withheld. We immediately started paying them one month and dropping a month and paying a month and dropping a month until such time as they refused to go along with us
4502 any further.

At that time we went to Mr. Lewis and Mr. Owens, of the United Mine Workers, and asked them to loan us a sufficient amount of money to pay the Welfare Fund and we borrowed $180,000 in May, 1961, we borrowed $360,000 in June, 1961, and then another $180,000 in July and another

$180,000 in August. Ninety days after that we started paying this money back and it was all paid in full by December, 1963.

Q. Was there an interest obligation on that loan?

A. Four per cent.

Q. Has that also been paid?

A. That has been paid.

Q. Are you familiar with the contracts that West Kentucky Coal has with the TVA at $2.89?

A. Well, only —

Q. (Interposing) And $2.90?

A. Only insofar as the accounting department is concerned.

Q. Do you know from which mines those contracts have been served by and large?

A. Yes, principally from Pleasant View and East Diamond.

Q. Have those contracts been loss contracts to the company?

A. No, sir.

* * * * * * * * * *

4503 Q. Would you state what your source of information is, Mr. McMahon?

A. The books of West Kentucky Coal Company.

Q. All right, sir. What approximately were the costs during the first year of operation under the 1959 contract?

A. Before selling in administrative experience the cost was $2.729.

4504 Q. Now, is that the cost at the Pleasant View Mine?

A. That is the cost at the Pleasant View Mine.

Q. Was other coal shipped or was coal shipped to other sources from that mine?

A. Yes.

Q. So that just isn't the cost on the Tennessee Valley contract?

A. No. There was other coal shipped from that mine.

Q. Do you have any separate item showing the cost just as it would relate to TVA?

A. There is no way in the world of getting that, there is no accounting procedure that would give you that information unless you operated it for one month on TVA and then another month on some other business, but as long as the coal is coming out of the mines there's no way in the world of separating the cost on screenings and lump coal, you have an average cost per ton and that's all you can get.

Q. Do you know whether that mine was in a state of development during that year, insofar as the No. 9 coal was concerned?

A. No, by 1960 it was going pretty well.

Q. I mean 1959.

A. Opened up the 9 seam in 1959 and we were in development of coal at that time.

Q. Do you recall during what period of the year 4505 that was?

A. I believe we started about February, 1959, when we got down into the 9 seam of coal, at that time we were mining some 9 and some 11, we were mining in both seams.

Q. Do you know when this TVA contract started?

A. In October of '59.

Q. Did the volume increase at that time?

A. Yes.

Q. Does that figure which you have stated include your general cost and selling expense?

A. No, sir.

Q. What?

A. General administrative and selling expense for the year 1960 amounted to approximately 20 cents.

Mr. Rowntree: We are still talking about '59 or '60?

Q. Fifty-nine is what I am talking about.

A. I don't have it for the whole year of '59, I have it

by months, for the last three months of '59 while we were shipping TVA coal.

Q. What are those?

A. October was $2.83, was mine cost, G and A and selling expense was 18 cents, approximately 18 cents. We don't even have that for those three months but it was approximately 18 cents, that was a total of $3.01 for

4506 October.

Q. All right.

A. It's $3.03 for November.

Q. Total?

A. And $2.90 for December. That's total, yes. That includes the allocation of what part of the selling expense and general administrative expense was allocated to that mine on a tonnage basis.

Q. All right, sir. Were these some expenses that the taking on of this contract created for West Kentucky Coal Company?

A. No, sir, no. Even if you had not had the contract you would still have had the same general administrative expense and the same selling expense in dollars, not in cents per ton but in dollars.

Q. All right. What was your experience in the following year?

A. 1960?

Q. Yes.

A. The total, including general administrative, was $2.925.

Q. What was your realization under this contract?

A. Our realization on that contract that we were shipping at this time and what we have been shipping since has averaged about $3.04, it has gone all the way from $2.98 cents up to $3.07 or 8 and 9 cents, but the average is $3.04.

4507 Q. All right, sir. Would you explain what you mean by the "realization" and why it is more than $2.90?

A. Well, it is based on the analysis that were included in the bid or on our guarantee and our coal has been running in excess of the guarantee, we have been getting a premium.

Q. Do you know whether it is the policy of the company to bid its quality conservatively?

A. Well, I would say yes. We are trying to bid to get business, of course, at all times.

Q. Well, with respect to the premium, have you ever had a penalty on any of this coal?

A. Yes, there has been a penalty or two, but very few.

Q. Has the normal case been that you have been receiving a premium?

A. Normally we get a premium on the coal.

Q. And you say it has been averaging about $3?

A. $3.04.

Q. All right. Continuing then, how much of general overhead and selling expense did you attribute to that 1960 figure?

A. 1960?

Q. Yes.

4508 A. 19.6 cents.

Q. What about '61?

A. Sixty-one, after G and A expense, $2.697.

Q. All right.

A. Sixty-two, $2.71, 72 cents, make it.

Q. Was your realization continuing at $3.04?

A. It was continuing at $3.04.

Q. Is that figure fairly steady throughout your experience?

A. That's right.

Q. What about 1963?

A. 1963, that's when we had the bad mine fire at Pleasant View and the cost of operation for the year went up quite a bit, our costs was 2.21.

Q. All right, sir.

A. That included the mine fire and included all for the whole year.

Q. All right. Did you thereafter close that mine?

A. No. We continued to operate it through 1964, trying and thinking that at all times that we would be able to overcome this very adverse mining condition that we had run into.

Q. All right.

A. However, in 1965, in July, it just didn't seem that there was any possibility of bringing the mine back
4509 to where it should have been and we closed it.

Q. All right, sir. What about East Diamond, when did you open East Diamond?

A. East Diamond opened in 1963, is our first year of accounting. Prior to that time there was sales of coal but they were based on the entry coal which was a credit back to the capital expenditure for sinking the slope and putting in the No. 9 seam of coal mine.

Q. Has your experience at East Diamond been more or less satisfactory?

A. Well, it has been more satisfactory.

Q. Would you state what it has been?

A. In 1963 our total was $2.33.

Q. Is that before —

A. (Interposing) We were getting $3.04 for the coal, so you can see where we were making about 71 cents a ton.

Q. Is that before your GA?

A. That's after G and A, G and A is in that figure.

Q. In the figure that you gave us?

A. That's right.

Q. What year was that, please?

A. 1963.

Q. Is that for the whole year?

A. That's for the whole year.

4510 Q. All right. Now, how much or during how much of that year were you shipping that coal?

A. The whole year.

Q. The whole year you were shipping coal to TVA?

A. TVA, yes, sir.

Q. What about 1964?

A. 1964 cost was $2.56, no, the cost was $2.723.

Q. All right. Mr. McMahon, Exhibit 388 shows that the company realized a net income before taxes in 1963 of $332,000 and it realized a net income before taxes in 1964 of $2,147,000. Would you explain how this increase occurred?

A. Well, it occurred just due to the sale of capital assets, it was a non-recurring income, $2,000,000 of it.

* * * * * * * * * *

4522 The Court: Gentlemen, what is your understanding as to what the record reflects as to when West Kentucky started delivering coal to Widows Creek, what do you understand?

Mr. Rowntree: I don't believe they started until February, their shipments started in May but I think it first shows up on the TVA records in maybe August of 1964 or July of '64.

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4524 Mr. Rayson: This is the testimony of T. J. Hoffman in the case of Pennington against Lewis and others, which was in April of 1961.

T. J. HOFFMAN

4525 DIRECT EXAMINATION

(Mr. Rayson read the questions and Mr. Combs the answers.)

"Q. Would you state your name, please?

"A. T. J. Hoffman.

"Q. Where do you live, Mr. Hoffman?

"A. Business address, Madisonville, Kentucky.

"Q. And what is your employment?

"A. Employed by the West Kentucky Coal Company.

"Q. What is your position with that company?

"A. Vice president.

"Q. May I ask your age, Mr. Hoffman?

"A. Seventy.

"Q. How long have you been with the West Kentucky Coal Company?

"A. Since September, 1909, with the exception of 1907 and '18 when I was with the U. S. Armed Forces.

"Q. Do you recall when you became sales manager?

"A. Well, no, sir, I don't know exactly, but I served about 25 years, then I was elected a vice president in 1936.

"Q. Have you been a vice president since then?

"A. Yes, sir.

"Q. Have you continued to have responsibility for sales as a vice president of the company?

4526 "A. Well, as well as other activities.

"Q. Have you had the responsibility for any particular area of sales?

"A. No particular area, only in a general way other than TVA.

"Q. Have you sold coal to the TVA as an employee of the West Kentucky Coal Company?

"A. Yes, sir.

"Q. Have you continued to look after its sales to the TVA?

"A. Yes, sir, I have.

"Q. Do you hold any other offices or position other than as vice president of West Kentucky Coal Company?

"A. Well, I am Chairman of the Board of Kentucky Coal Agency, Madisonville, Kentucky, and I am a member of the National Coal Association Traffic Committee, Washington, D. C.

"Q. When did you first sell coal to the TVA?

"A. In 1944.

"Q. What was the occasion of that sale to the TVA?

"A. Well, after soliciting an order for some time, they

finally gave me an order for coal for delivery in a barge at Caseyville, Kentucky. A. L. Metling Barge Line did the towing."

* * * * * * * * * * *

4527 "Q. Did your company barge coal at that time as well as ship coal by rail?

4528 "A. No, sir, we did not. We had barges but we had no motive power.

"Q. Before we go further with the questions of the witness, I want you to identify the location of West Kentucky on your map here."

Mr. Rayson: Well, we had a map that we used in this case which we don't have it here.

Mr. Combs: You might ask that question about the Uniontown Mine.

Mr. Rayson: The map is in evidence, I am advised. At that point the witness referred to a particular area on the map and this question was asked:

"Q. In this general area here?

"A. That is right. The Uniontown Mine is located in Union County on the Ohio River. It is seven miles from Morganfield, and the property is in Hopkins and Muhlenberg County is about 85 miles from Paducah, Kentucky, and 60 miles from Evansville, Indiana.

"Q. Is the Uniontown Mine also in this area marked on the map?

"A. That is right, right on the Ohio River.

"Q. Did you make any other sales to the TVA in the 1940s other than this contract that you worked out with them in 1944?

"A. Yes, sir.

"Q. Did you sell very large quantities of coal to
4529 them?

"A. Well, I would say I made sales to them that were very satisfactory as well as a rather small percentage of my company's total output.

"Q. Do you recall the amount of the contract in 1944?

"A. I believe that was about 250,000 tons a year.

"Q. Was that over an extended period of time?

"A. Yes, sir, it was.

"Q. Now, Mr. Hoffman, have you prepared a table of the sales of coal that your company has made, in round numbers, to the TVA from 1952 through 1959?

"A. Yes, sir."

Mr. Rayson: Your Honor, I think that we shall not introduce that, that was brought forward through Mr. McMahon's testimony this morning. I think some of the questions do relate to this, so perhaps I had better introduce it. We offer this exhibit as an exhibit to the witness' testimony. Your Honor may want to follow this during the testimony.

(The chart referred to above was marked D290 and received in evidence.)

"Q. Now, are the tons shown in the middle column there under 'Shipped by West Kentucky and Nashville' the total tonnage that your company shipped to TVA during the year shown in the extreme left hand column?

4530 "A. It is.

"Q. Does that include the tonnage you shipped to TVA both on term contracts and spot contracts, Mr. Hoffman?

"A. Yes, sir.

"Q. Now, starting with the year 1953, could you explain to us the amount of coal shown to have been shipped to TVA in that year? Will you explain the amount that was shipped on term contracts and the amount that was shipped on spot orders?

"A. In 1953 there were 425,980 tons shipped on term contract and 60,000 tons shipped on spot contracts. 1954—

"Q. Before you go further, Mr. Hoffman, does that indicate that your company obtained term contracts for 425,000 tons that year? Does that mean that term contracts

obtained in previous years were being fulfilled in that year, or does it mean it was a combination of both?

"A. It was a combination of both.

"Q. All right. Now, in 1954 your sales to the TVA went up by approximately 300,000 tons — 330,000 tons. Would you explain the term and spot breakdown of that tonnage?

"A. There was 1,050,000 tons on a term contract for 36 months, and that goes back to the year — well, that is not 1954, although that includes coal from Uniontown and we did not take over that property until October 1, 1955. That was a portion of the Nashville Coal property.

4531 "Q. Is it your testimony then that this 978,000 tons figure shown for 1954 includes a tonnage shipped by Nashville Coal Company?

"A. A contract that was in existence, a 36 months contract that we took over when we took over the property.

"Q. You took over the Nashville Coal Company in the latter part of 1955, I believe?

"A. That is correct; yes, sir. And there was 110,000 tons on spot, 110,500.

"Q. What was the situation in 1955?

"A. In 1955 we sold on term 195,000 tons over a 30 month period.

"Q. Did you have several term contracts you were shipping on in 1955?

"A. Yes, from different mines. That is from Pleasant View Mine. In other words we made several term contracts. Another 252,000 for 21 months, and another for 120,000 for 14 months. Yes, 104,000 for 12 months; 117,000 for 18 months and 228,300 for 18 months. And during that period for spot we sold 93,000 tons.

"Q. What percentage of the TVA market were your sales in 1955?

"A. 1955 it was 8 per cent, 9 per cent.

"Q. And in the preceding year, I believe you have computed that to be 9.6 per cent, is that right?

4532 "A. Yes, sir, that is right.

"Q. Now, in 1956 did you sell any spot coal to the TVA?

"A. We sold no spot coal but we made two term contracts. One was for 468,000 for 36 months; one for 240,000 for 36 months.

"Q. So it was the shipments on these contracts and term contracts you had in previous years which made up your total of 1,511,000 to TVA in 1956, is that correct?

"A. That is correct, yes, sir.

"Q. Does that include a tonnage from the Nashville Coal Company contract?

"A. Yes, sir, it includes all tonnages.

"Q. Do you know how much that was on a yearly basis?

"A. You mean from Nashville?

"Q. Yes.

"A. Well, only that portion of it that was carried through from previous years where there was a long term contract.

"Q. Now, you have testified that the Nashville Coal Company which you acquired in 1955, had a contract with the TVA calling for a 1,050,000 tons over a 3 year period?

"A. That is correct. It expired in 1957.

"Q. And this was a contract that your company inherited when you acquired the Nashville Coal Company, is

4533 that correct?

"A. Yes, sir, that is so.

"Q. Is the tonnage indicated by that Nashville Coal Company contract indicated in the 1955 and '56 figures?

"A. Yes, sir, it is."

"Q. The Uniontown Mine to which you referred was a Nashville Coal Company mine, was it not?

"A. That is right. But Nashville Coal Company's charter was surrendered when we obtained the property to the State of Tennessee. It was a Tennessee corporation. Then the Nashville Coal, Inc., was created, which is a Kentucky

corporation and which is a wholly owned subsidiary of West Kentucky Coal Company.

"Q. All right, sir. What percentage of the TVA market did West Kentucky Coal Company and the Nashville Coal Company have in 1956?

"A. 7.4 per cent.

"Q. Now, in 1957 what was your total tonnage to the TVA?

"A. 963,384 tons.

"Q. Did your company have a number of contracts with TVA which came to an end in that year?

"A. Yes, it did.

"Q. Did the Nashville Coal Company contract which you had inherited from the Justin Potter Company

4534 terminate during that year?

"A. Yes, it did.

"Q. Do you recall when that terminated?

"A. I think along about June.

"Q. And what was then the amount of this 963,000 tons which you sold to the TVA which was on a spot order basis?

"A. In 1957 there was 313,000 tons.

"Q. So in 1956, whereas you had orders to the TVA for approximately a million and a half tons, all on a term basis in 1957 you had term orders with the TVA for approximately 600,000 tons and the balance of your tonnage to TVA was on the spot order market, is that correct?

"A. That is correct. I was unable to continue the Uniontown contract after its expiration on a term basis.

"Q. I see. Now, what percentage of the TVA market did your 1957 sales to TVA represent?

"A. 4.9 per cent.

"Q. Now, in 1958 this chart indicates that your sales to the TVA increased slightly, 1,094,396 tons, is that correct?

"A. That is correct; yes, sir.

"Q. And what part of that tonnage constituted the sale of coal on term contracts to the TVA and what part constituted the sale on the spot contract basis?

"A. Well, there was 624,000 tons sold from rail
4535 mines on a 36 months basis. Nine hundred thirty-six thousand tons sold for delivery over 24 months from the Uniontown Mine.

"Q. Those tonnages were not all delivered in 1957, were they?

"A. No, sir.

"Q. Or 1958?

"A. The rail commitment was for 36 months and the river commitment was for 24 months.

"Q. What were your spot contracts to the TVA, total spot contracts to the TVA in 1958?

"A. One hundred ninety eight thousand tons.

"Q. So the difference between 198,000 and the 1,994,000 would be the coal which you sold TVA on a term basis?

"A. Yes, sir, that is right.

"Q. In 1959 your sales to the TVA were 1,336,870 tons. And how much of that was on a spot order basis?

"A. 1959, spot order basis was 10,000 ton.

"Q. And what percentage of the TVA market did that represent?

"A. Represents 7.5 per cent.

"Q. Now, Mr. Hoffman, in these sales shown on Exhibit 168," Exhibit 390 in this record, "the paper that we are looking at, where were these shipments of coal by
4536 your company, that is, either West Kentucky or the Nashville Coal, Inc., after you acquired it, to what plants of the TVA were these shipments of coal?

"A. All of these shipments went to the Shawnee Plant at Paducah, Kentucky, the Johnsonville Plant at Johnsonville, Tennessee, and the Colbert, at Colbert, Alabama. Colbert had no rail connection. They were entirely dependent on water movement of coal from Western Kentucky. We made no deliveries of coal whatsoever to Widows Creek, either rail or water, none to John Sevier, none to Kingston."

"Q. Would you tell us the water distance from the Uniontown Mine to the Shawnee Plant?

"A. Yes, sir. I can give you that. I can give it to you to all these plants. The distance from Uniontown to Shawnee by water, statute miles, is 112. To Johnsonville is 129½ miles. Colbert, 337 miles. Widows Creek, 500 miles. Kingston, 663 miles.

"Q. Now, does your company, West Kentucky Coal Company, own its own barging equipment now?

"A. Yes, we do.

"Q. And does it have any other mine from which it barges coal other than Uniontown?

"A. No, sir, no other one.

"Q. Is it feasible for your company to barge coal from its Uniontown Mine to Widows Creek or to Kings-
4537 ton?

"A. No, it is not.

"Q. Would you explain why it is not feasible?

"A. Well, the Widows Creek Plant has a rail rate of $1.55 from West Kentucky and it was a much lower rate from the Tennessee mines and also receives quantities of coal by truck from Tennessee mines. The Kingston Plant has $1.10 rate from the Tennessee mines and it is obvious.

"Q. What Tennessee mines are you referring to when you say —

"A. I am talking about mines on the Southern Railroad.

"Q. You mean the mines in East Tennessee?

"A. Yes.

"Q. Are there any practical obstacles to your barging coal to these?

"A. Yes, there is in addition to that, it is impractical for us to proceed up the Tennessee River to Widows Creek or Kingston for the reason when we pass Wilson Lock we encounter small locks. They are 360 feet long by 60 feet wide. One of these barges is 195 by 35 by 12 and the vessel is 147 feet long, so you just can't do it.

"Q. In other words, you just can't get them through

the locks there in order to barge coal up to these plants, is that correct?

"A. That is right. We could get through there one barge at a time and take the boat through separately, but
4538 it would be an expensive operation. It is just not a practical operation.

"Q. Do you know what your rail rates are from West Kentucky over to the Kingston Plant?

"A. Kingston Plant?

"Q. Yes.

"A. Yes, sir. It is $3.20 a ton on the Illinois Central only. We have never shipped any coal there.

"Q. Can you compete with mines in the area of East Tennessee with that rail rate?

"A. No, sir, impossible. You can't compete with a $3.20 rate against a rate of $1.10.

"Q. What about your rate to John Sevier from West Kentucky?

"A. We have no rate to John Sevier.

"Q. In other words, you can't?

"A. You can't get up there by water and you can't get up there — it is above Knoxville, at Rogersville, Tennessee.

"Q. What is your rail rate from your West Kentucky mines to Shawnee, Johnsonville and the other steam plants in the western division?

"A. Our rate to Shawnee is 99 cents. The minimum rate to Johnsonville is through Grand Rivers, rail and barge movement, which we do not participate in, but the
4539 rail rate is from West Kentucky Mine to Grand Rivers is 94 cents. There is a 13 cents dumping charge at Grand Rivers and a 16 cents barging rate, making a total of $1.23 to Johnsonville. At Colbert, we have no rail rate and the movement there would be through Grand Rivers again, 94 cents, and there is a 13 cent dumping charge and 62 cent barging rate, $1.69.

"Q. Now, are your mines competitive to those areas with those rail rates?

"A. Yes, we could move coal by rail on that basis.

"Q. How many mines did you acquire from Nashville Coal Company?

"A. I think it was about five.

"Q. How many mines did your company have before that?

"A. We had four.

"Q. Were they all in this West Kentucky area?

"A. Yes, they were.

"Q. Have you had to close any of these mines during the '50s?

"A. Yes, we have.

"Q. Would you explain which mines you have closed and why you closed them?

"A. Well, we opened up a mine named Atkinson in 1952. It was closed in 1957. We were unable to sell the coal.

4540 "Q. What sort of an investment does that represent, opening a mine of the type of mine that Atkinson was?

"A. What investment?

"Q. Yes. What does it cost to open a mine like that?

"A. Well, that mine cost about a million and a half dollars, but it was not thoroughly equipped. It had no washing plant. It had no driers and only a 2-track tipple.

"A modern mine like Uniontown will cost you $7,000,000, or a mine like Pleasant View, where it is fully equipped with five tracks, all modern equipment including washing plants and driers. It is a different amount, depending on what you are trying to accomplish. In this particular case, that mine was opened up primarily to sell steam coal to public utilities and we had hoped that we could sell a substantial quantity of that coal to the TVA but we were unable to do so. After struggling with the mine for a few years, we closed it.

"Q. All right. What other mines have you closed?

"A. Well, we closed the East Diamond in December 23, 1960. Closed Heckla Mine —

"Q. Why did you close your East Diamond Mine?

"A. We closed the East Diamond Mine because we worked out the No. 11. That is, we didn't thoroughly work out the No. 11, we still have some coal there, but it was not economical to continue on the No. 11 coal, which is
4541 primarily a coal for stoker trade, domestic stoker trade. Why we closed it, although we had tremendous acreage of No. 9 coal only 88 feet beneath the No. 11 — that mine was a modern mine, it was equipped with all the modern conveniences, including washing plant, but we were unable to interest anyone in buying the No. 9 coal.

"Q. You mentioned one other mine, I believe, that you said you closed.

"A. Well, we closed the Heckla April the 10th, 1954.

"Q. And what brought that about?

"A. Same thing. We worked out No. 11, were unable to sell the No. 9.

"Q. Now, when you close a mine like that, I suppose you take the machinery out of it, do you not?

"A. Well, not in every case. Most of the time you do because you can't — for any protracted period, you can't hold a mine idle. It fills up with water, in West Kentucky at least, and to pump it out — we have a situation like that right now with a mine we call East Diamond, that I just mentioned. We could go down to the No. 9 coal there, and we are pumping that mine, but we figure it will cost us a million dollars to keep that mine pumped out to go down to the No. 9 coal.

"Q. If you don't do that, though, can you go back to that mine at a later time?

4542 "A. Yes. The question is whether it is more economical to continue pumping the mine intermittently or just abandon it and then sink a new shaft.

"Q. Now, have you or are you still in operation at the other mines that you had acquired from Nashville?

"A. Yes, we are, with the exception of Kirk Mine and Stony Point. We closed the Kirk Mine July 31, 1959, and we closed Stony Point January the 8th, '57.

"A mine called Pleasant View, which is one of the West Kentucky mines, was closed February, 1959, and re-opened October the 14th, 1959, after we were successful in selling the TVA contract for 850,000 tons of coal a year for ten years. In that case we kept that mine on a stand-by basis.

"Q. Now, Mr. Hoffman, have you prepared an exhibit showing the various bids that you made to the TVA from the Uniontown Mine on the TVA spot market?

"A. Yes, I have that."

Mr. Rayson: We offer that as the next exhibit in the case.

The Court: Exhibit 391.

(The compilation referred to above was marked D391 and received in evidence.)

* * * * * * * * * *

4543 Mr. Rayson: At that point I stated in the prior testimony, your Honor, "It may save some time if I stated what the exhibit shows. This exhibit shows each bid made from the West Kentucky Coal Company's Uniontown Mine, shown on the large yellow paper introduced by the plaintiffs as an exhibit in their part of the case. It shows each bid made, the amount of tonnage that was contemplated under the bid, and whether or not an award was made.

"In most instances, and where available, it shows the tonnage price at which West Kentucky submitted the bid, and then under that TVA plant evaluation, it shows the figure at which the TVA evaluated West Kentucky Coal Company's bids as per million BTUs for the Colbert Steam Plant in many instances and for the Shawnee Plant in most instances.

"Q. Before going on with this, Mr. Hoffman, I would ask you when you bid coal from your Uniontown Mine to Shawnee do you submit a delivered price bid?

"A. Yes, we do. We are a bulk carrier; we are
4544 not a common carrier, and we try and support our own material.

"Q. So you are interested then when you submit a bid from the Uniontown Mine in getting a contract which includes the cost of transportation? In other words, a contract which will enable you to use your transferring equipment?

"A. That's correct.

"Q. Your barging equipment?

"A. That's correct.

"Q. Now, is the same thing true as far as the Colbert Plant is concerned?

"A. Yes, it is. Colbert cannot receive any rail coal from West Kentucky.

"Q. Is there any advantage to the shipper such as you in shipping coal by barge rather than by rail?

"A. Well, only in this way: Uniontown Mine has no rail connection. If you are going to sell coal from the Uniontown Mine, it would of necessity have to be water movement.

"Q. Well, apart from the Uniontown Mine, is it normally cheaper to barge coal than it is to transport coal by rail?

"A. Yes, it is.

"Q. When you barge coal, is there a minimum amount of coal that you have got to barge in order to be economical in your barging costs?

4545 "A. Well, yes, and again that primarily depends on the motor vessel. You can handle a smaller tonnage with a 1,000-horsepower vessel where you can't do it with a 3,200-horsepower boat, and I might say our equipment, we have two 3,200-horsepower motor vessels, and one 5,400-horsepower, and the minimum tonnage we should handle with those vessels is 20,000 tons.

"Q. I take it that sometimes you have to do less than that?

"A. Oh, yes, that's right.

"Q. And sometimes you get more?

"A. That's right.

"Q. You ship, you barge coal in flotillas of barges, a number of barges all hooked together?

"A. Yes; yes, sir.

"Q. Mr. Hoffman, prior to February 28, 1957, had you submitted any bids to the TVA spot market from the Uniontown Mine?

"A. We did not.

"Q. What was your sales activity from the Uniontown Mine at that time?

"A. Well, it was on term.

"Q. And was one of your term contracts with the TVA?

"A. That's right.

"Q. And did you have term contracts elsewhere?

4546 "A. Yes, we had contracts elsewhere.

"Q. Now, would you explain just exactly what you did in connection with the first bid shown on Page 1 of Exhibit 391 in this record?

"A. Well, on February the 26th, we submitted a bid offering 12,500 tons of Uniontown coal at a price of $4.75, delivered at Colbert.

"Q. That is a delivered price?

"A. That's right.

"Q. And the TVA evaluation was what?

"A. The TVA evaluation was .2180 per million BTU.

"Q. Now, were you awarded a contract on that?

"A. We were not.

"Q. On that bid?

"A. It was unsuccessful.

"Q. Did you thereafter, on March 13, submit another bid?

"A. We did.

"Q. Submit another bid in the same manner?

"A. Offered 12,500 at the same price, $4.75, and the evaluation was .2180.

"Q. Now, looked at Footnote B, the Footnote B to your bid of March 13, 1957, I note that the high successful bid on that occasion was evaluated by the TVA at .1837, roughly 18 and a third cents per million BTUs?

4547 "A. That's correct, yes, sir."

Mr. Rayson: "I might say, your Honor, that these figures shown in the footnotes, in fact all of the figures shown on this, are taken from the TVA bid award which have previously been introduced in evidence."

They have been introduced in this case also and that is generally Exhibit 171, 172 and thereabouts. They are entitled "Tabulation of awards made and bids received, spot and emergency coal," for various dates.

"Q. Now, your bid was some nearly three cents per million BTUs higher than the high successful bid at that time?

"A. It was slightly over three cents.

"Q. Yes.

"A. In money value it equaled about 85 cents per ton of 2,000 pounds.

"Q. What does a cent per million BTU's, as a rule of thumb, represent to you in terms of cents per ton?

"A. One cent per million BTU would be equal to 25 cents per ton in money.

"Q. So, in other words, your bid at that time was roughly 85 cents over the market, is that right?

"A. Over the successful bids, that's right.

"Q. And I notice that you again on March 20th submitted a bid at the same price, that is $4.75 a ton,

4548 that you were again unsuccessful?

"A. That is correct.

"Q. Did you thereafter reduce your price?

"A. I did, $4.25.

"Q. I notice that at that point the TVA evaluated price per million BTU was .1916?

"A. That is right.

"Q. What was the high successful bid to the TVA on the occasion of that bid by West Kentucky Coal Company?

"A. That was on March 27th?

"Q. Yes.

"A. The high successful bid was .1629.

"Q. I believe it is .1829.

"A. .1829; that is right.

"Q. And that would represent, according to your formula, roughly, about 40 cents over the market?

"A. Well, I figure about 32 cents.

"Q. Did you continue bidding at the $4.25 price, Mr. Hoffman?

"A. Yes, I did.

"Q. And how many more times did you continue at that price?

"A. Continued at that price up to and including April 24th.

"Q. And were you ever successful at that price?

4549 "A. No.

"Q. And did you thereafter again reduce your price on the TVA spot market?

"A. Yes, we did. We reduced the price to $3.70 and the bid was evaluated at Shawnee.

"Q. I notice that the evaluation of the bid at Shawnee at that price in the bid of September 4, 1957, where no tonnage figure is shown, was that the evaluation price, evaluated BTU price of .1675 and that it was also evaluated at Colbert at .1804?

"A. That is correct.

"Q. Is that the same coal? Was the same coal evaluated in each of those?

"A. Yes. Here is the practice of TVA on those spot invitations: They send out an invitation the latter part of

the month specifying that they will accept spot offers of coal each week not later than Thursday, and they have the privilege of evaluating any coal offered to any plant they see fit.

"So consequently they can either evaluate it at Colbert or at Shawnee.

"Q. Now, would the difference in the price between the evaluation at Shawnee and Colbert represent the greater distance that you would have had to barge that coal?

"A. That is correct; yes, sir.

4550 "Q. I notice that you were unsuccessful on your September 4, 1957, bid.

"A. That is correct, we were 13 cents high.

"Q. What was the situation at your Uniontown plant in September with reference to sales?

"A. On September 27 we submitted a bid for 18,000 tons at $3.70 and we were the successful bidder. Our bid was the highest bid acceptable.

"Q. That was the September 27 bid?

"A. That is right.

"Q. Had you submitted a bid at the same price before at which you were unsuccessful?

"A. That is right, on September 18th.

"Q. So your first successful bid on this list of bids is September 27th, and at that time, according to Footnote J, the bid of West Kentucky Coal Company was the highest bid which TVA accepted?

"A. That is correct.

"Q. Now, in September why was West Kentucky Coal Company interested in submitting bids to the TVA spot market?

A. Well, the reason for it was that we had lost some tonnage, particularly a movement of coal under the Nashville Coal Company contract that we had acquired. And also we had —

"Q. Is that the TVA contract that you inherited from Nashville Coal that called for 350,000 tons a year?

4551 "A. That is correct; yes, sir.

"Q. And was that coal going from the Uniontown Mine to the Shawnee Plant of the TVA?

"A. It was going to the Colbert Plant.

"Q. Anyway, it was coming from your Uniontown Mine?

"A. That is right. They had the privilege of taking it to either plant that they wanted.

"Q. Do you recall just when that contract expired?

"A. I think it expired in June, 1957.

"Q. Had you lost any other business at that time in the late summer of 1957?

"A. Yes, we had lost some business. We had moved some coal through Mount Vernon, Indiana, by barge and rail to Chicago in connection with the C&I Railroad.

"Q. Had you lost that order insofar as the barge coal was concerned at Uniontown?

"A. Yes, we had lost that.

"Q. Was there any other business you had lost from the Uniontown Mine about that time?

"A. I don't recall offhand any business we lost other than the TVA in this movement through Mount Vernon.

"Q. Had you shipped any coal to the Tampa Electric Company during the summer of 1957 or spring of 1957?

"A. Yes, we did. We shipped 118,000 tons.

"Q. Was that on a term contract or on a spot

4552 contract?

"A. That was spot contract.

"Q. Were you in a position, or were you able to ship any more tonnage to Tampa in the fall of 1957?

"A. No, sir, we were unable to interest them in giving us an order.

"Q. Had all the coal that you had shipped to Tampa come from your Uniontown Mine?

"A. Yes, it was.

"Q. And were these the reasons you were interested in bidding on the spot market of the TVA?

"A. Yes, sir.

"Q. Why didn't you reduce your operation at the Unionstown Mine or shut that mine down?

"A. Well, we did reduce the operation. That mine, when we acquired that mine, it was producing about 5,000 tons per day, and at this time it was producing 8,000 tons a day, so we did cut it back to three days a week.

"Q. When did you do that?

"A. Well, along after we finished the movement of coal to TVA and to Tampa.

"Q. Are you referring to the TVA contract that expired in June?

"A. That is right.

"Q. All right. Following your successful bid in September at a price of $3.70, what did you do on the
4553 spot market?

"A. We continued offering coal but were unsuccessful.

"Q. And at what price did you continue to offer coal?

"A. At the same price, $3.70 a ton."

"Q. I notice that your first bid, after your successful bid of March 27, at $3.70 was evaluated at .1668, and that time am I correct in saying that the highest successful award was evaluated by TVA at .1641?

"A. That is correct.

"Q. Now, also in connection with that bid, I notice under 'tons' there is a figure '18-60,000'. I wish you would explain what that means.

"A. Well, I had discovered that the TVA practice was to take the lowest price coal offered, and if the quota was completed and there is no room for the tonnage you offered then your bid was not accepted. Consequently, I gave them a spread of 18 to 60,000 tons hoping we would get 60 but if they could not award that amount of tonnage they would at least award 18,000.

"Q. All right. I notice then, without going through each one, that you continued the $3.70 bid for three times unsuccessfully after your only successful bid prior to October 15, 1957.

"A. That is correct. In other words, I made 12 bids and 11 were unsuccessful and only one successful.

4554 "Q. Now then, on the first bid shown on Page 2 of this exhibit, I note that you were awarded a spot contract for 18,000 tons again at the same price, $3.70.

"A. Yes, sir."

Mr. Rayson: Your Honor, I might say that all of it is on one page of the exhibit that we have introduced in this case.

"Q. I note also at that time that your evaluated price was .1649, which was a somewhat more favorable price to TVA than was your previous bid at which you also used the $3.70 figure.

"A. That is correct.

"Q. Would you explain how the evaluated price to TVA was reduced?

"A. Well, the high successful bid was .1630.

"Q. No, sir. I am referring to the first bid on Page 2 of this exhibit.

"A. You are speaking about the one on October 25th?

"Q. I am.

"A. Yes. That was evaluated at .1649.

"Q. Why did the evaluation of that bid change from .1668 to .1649 while your tonnage price remained the same?

"A. That was due to some change in the guaranteed analysis. You understand that the money value here is merely a base. They compute your bid on the basis

4555 of heat value per million BTU for a cent. Consequently, if you change your guaranteed analysis that would reflect in your cost per million BTU.

"Q. What would cause you to change the guaranteed analysis?

"A. Well, we take samples and run analyses ourselves every day on these coal mines, and if we note the analysis is improving then we step up the guarantee.

"Q. Does the coal in your seams remain at a constant point as far BTUs are concerned?

"A. No, they don't, that varies. You might be mining towards the crop and you might get into a wet room or two, and might get into what we call a horseback that would affect the quality of the coal.

"Q. Now, after that successful bid of October 25, 1957, I notice that you submitted two more bids at the same price on which you were unsuccessful.

"A. That is correct.

"Q. So that in connection with the second of these bids, that is the bid of November 6, 1957, your evaluated price was .1649 while the TVA evaluated price was .1630.

"A. That is correct.

"Q. Now following those bids I note that you submitted two more bids again at the $3.70 price at which you were successful.

4556 "A. Yes, sir.

"Q. Now in connection with the first of those, I will ask you if your bid, that is the bid of November the 15th, was the highest successful bid awarded by TVA at that time?

"A. It was.

"Q. I will ask you in connection with the second of those successful bids, that is the one of November 22, 1957, if there were other bids at Shawnee Plant for less than yours?

"A. Yes, there were. We were the highest bidder.

"Q. After those two successful bids I note that on November 26 and December 4 you again submitted a bid at the same price, $3.70 a ton, in which you were unsuccessful.

"A. That is correct.

"Q. I note further that at that time that the evaluated

price of your bid was .1649, whereas the high successful bidders were at .1626 and .1616 for the two respective bids.

"A. That is so; yes, sir.

"Q. Now, I note on your bid of December 20, 1957, that you reduced your price to $3.62. Would you explain why and how arrived at that reduction of price?

"A. Well, I noticed under my bid of 12-4 where I was unsuccessful, that was 8 cents a ton higher, so, consequently, on the next bid I made I reduced my price 8 cents.

4557

"Q. In other words, you followed the market to what it had been on the previous successful bid of some other company?

"A. That is correct.

"Q. Now, after bidding successfully at $3.62, did you again bid at $3.62?

"A. Yes, I did.

"Q. And were you successful?

"A. No.

"Q. At that time I note that your bid was evaluated at .1616 and the highest bid was under you at .1610?

"A. That is correct.

"Q. Now, then I note that on January 1, 1958, you reduced your price to $3.58. Would you explain how you arrived at that reduction in price and why?

"A. Same formula. When I was unsuccessful on the previous bid and I got a listing of the awards, I concluded I would have to reduce the price four cents if I expected to get an award.

"Q. Were you undertaking to find term contracts for the Uniontown Mine during all of this period?

"A. Oh, yes, that is what we were trying to do.

"Q. Were you interested in continuing on the TVA spot market?

4558

"A. No, just a case of necessity.

"Q. All right. After bidding successfully at $3.58,

I notice that you twice again bid that $3.58 and on each occasion you were unsuccessful.

"A. That is so.

"Q. Then on January 29th you reduced your price to $3.55 and that you were still unsuccessful.

"A. Yes, sir, that is so.

"Q. And on the occasion of that bid, that is your January 29, 1958, bid I notice that your evaluated price is .1586, whereas the highest successful bid was .1515.

"A. I believe it was .1555.

"Q. .1555?

"A. Yes, sir.

"Q. Does that represent 10 to 15 cents below your —

"A. Yes, it would, yes.

"Q. Your price per ton?

"A. That is correct.

"Q. Then I notice you submitted two bids from Shawnee in February at $4 per ton at which you were unsuccessful and that you returned to your previous bid of $3.55 on March 12, 1958, and that you were again unsuccessful.

"A. That is correct.

"Q. Did you then discontinue any bid operations from the Uniontown Mine on the TVA spot market?

4559 "A. I did.

"Q. Why did you discontinue bidding operations at that time?

"A. Because I felt it was a situation where it did not produce results and I was endeavoring to obtain a term contract.

"Q. Did your production decrease at the Uniontown Mine following this?

"A. Yes, it did.

"Q. Following this withdrawal from this market?

"A. Yes, it did.

"Q. Have you prepared a list of your barge loadings at Uniontown for 1958?

"A. Yes, sir, I have that here."

* * * * * * * * * *

Mr. Rayson: This is an exhibit showing the barge loading at the Uniontown Mine in 1958, which is an extra copy.

The Court: Exhibit No. 392.

(The barge loadings referred to above were marked D392 and received in evidence.)

4560 "Q. Was January of 1958 the last month in which you shipped coal to the TVA on the spot market?

"A. That is correct.

"Q. Do these figures indicate the reduced level of your activity at the Uniontown Mine following this?

"A. They do.

"Q. I notice that your barge shipments or barge loadings go up in the latter part of the year. Could you explain why they did?

"A. I was successful in obtaining a term contract from the TVA.

"Q. Mr. Hoffman, in connection with any of these bids on the TVA spot market, was it your intention to depress in any manner the price of that coal?

"A. No, sir.

"Q. What was your intention in bidding on that coal?

"A. My intention was to relieve the situation at our Uniontown Mine as far as possible until such time as I could obtain a term contract.

"Q. Were these bids of the West Kentucky Coal Company at the Union Mine your responsibility? Were you the one that formulated them?

"A. That is right.

"Q. Did you confer with your other officers of the company?

4561 "A. Oh, occasionally we conferred about it. On spot movement it was a case of trying to relieve the situation at the mine.

"Q. Did you bid this coal on the TVA market pursuant to an agreement with any other company?

"A. None whatsoever.

"Q. Did you do so pursuant to any agreement with the United Mine Workers of America?

"A. No — never talked to any of them.

"Q. Did you do so pursuant to any instructions from Cyrus Eaton?

"A. No. Never talked to him about selling coal at all.

"Q. Did you do so with the intention of harming coal operators in East Tennessee?

"A. No, sir.

"Q. What is the type of coal that is produced in the Chiontown Mine? Is it the resultant coal or just a mine run coal?

"A. It is mine run coal. It can be crushed and it has a washing plant.

"Q. What about your other mines that sold to the TVA, what sort of coal do they produce?

"A. That would be resultant coal.

"Q. Would you explain to us just what that term 4562 means?

"A. Well, a resultant coal would be what is left after preparing a special size product. As an example, we were running stoker size for the domestic trade, and we would have left an inch or a one-quarter inch by zero unwashed, or we might have a one-eighth by 32 mesh washed, which we call in the trade carbon. There is no place to sell that coal, except to some large steam user.

"Q. Is this resultant coal a by-product of your regular products of your other mines?

"A. It is resultant from the mine run, yes.

"Q. You say there isn't a large market for that sort of coal?

"A. None whatever. We usually sell some of it to the cement plant, but practically all of them are on gas.

"Q. What can you do with this coal if you don't sell it?

"A. Well, the only thing we can do would be to throw it away.

"Q. Can you keep it?

"A. No, you can't.

"Q. What is the problem there?

"A. Well, it deteriorates and it is expensive to put it on the ground and recover it. If you load it in the car—

we work under a 25 per cent car rating, and you would

4563 have to sell it or move the car before you could get

empty cars to run the mine again. I might explain this. That a coal mine is different from a manufacturing plant. After you make a run of coal, if you have got 100 or 150 cars, you have got to sell it.

"Q. Will the railroad give you any more cars if you don't move the ones you have already loaded?

"A. Only completement to what portion you have given your no bills, which makes an impossible situation, because you can't run a coal mine for three or four hours. You have got to make a complete 8-hour run. If you can't get enough empty cars to make a run, you just have to put the mine down until you sell the coal.

"Q. Why can't you run a mine for three or four hours?

"A. Your cost would be prohibitive.

"Q. What were the other mines that you operated during this period from which you sold coal on the TVA spot market?

"A. Well, from East Diamond, Pleasant View, Shamrock, Crescent.

"Q. Did all of these mines produce the resultant coals of which you have spoken?

"A. Yes, they do.

"Q. Could you tell us what other markets you had for the resultant coal?

4564 "A. We had practically no other market for it.

Some rather large steam plants won't pay freight on it. There have been conditions where we had to throw it away.

"Q. In connection with any of those bids from their other mines, your mines other than Uniontown, did you

enter those bids pursuant to any agreement with any other companies, or with the purpose of depressing the TVA market?

"A. No, sir, I never talked to any other company about any bid we made to the TVA.

"Q. Did you do so pursuant to any agreement or understanding with the United Mine Workers?

"A. None.

"Q. Did you do so with the purpose in mind of harming coal companies in East Tennessee?

"A. No, sir.

"Q. You think your bids had serious effect on the spot market?

"A. Yes, sir.

"Q. I say, do you think that your bids had an effect on the price of the spot market?

"A. No, sir. I think the offers from other coal companies had an effect on my bid. I think the record shows it.

"Q. How would you explain that? What do you mean by that?

4565 "A. I mean I was unsuccessful here more than I was successful and someone else made a lower price than I made.

"Q. Were you leading the market or were you following it?

"A. I was following it."

* * * * * * * * * * *

4578 Mr. Rayson: We read now, your Honor, the testimony of Mark E. Eastin in April of 1961 in the trial of Pennington against Lewis and others.

MARK E. EASTIN

DIRECT EXAMINATION

(Mr. Rayson read the questions and Mr. Combs the answers.)

"Q. This is Mr. Mark L. Eastin, is it not?

4579 "A. Mark E.

"Q. Mr. Eastin, where do you live?

"A. Madisonville, Kentucky.

"Q. What is your occupation?

"A. I am president of the West Kentucky Coal Co pany.

"Q. How long have you been president of the We Kentucky Coal Company?

"A. I was elected president March 16, 1956.

* * * * * * * * *

4580 "Q. What is the history of West Kentucky Co Company? How long has it been in existence?

"A. Well, it dates back to 1904 and '5 when the Nort American Company, which was a utility holding compan in the East, started up a coal field to go on the Ohio Riv in Union County for the purpose of having reserves for th Union Electric Company, which was a utility in St. Loui and from there on the reserves were enlarged and the com pany increased in size.

"Q. What is the area from which West Kentucky get its production? In other words, where does it operate?

"A. All in Western Kentucky, and at the present tim we are operating in Hopkins County and Muhlenber

4581 County. We own some property in Webster Count and also have operated in Union County.

"Those counties all lie joining each other, they lie clos together.

"Q. In its production field, does West Kentucky pro duce mostly in the field of underground mining or in strip mining?

"A. Yes, we have been principally underground miner since the inception of the company. In fact, we have neve done any actual stripping on our own. We have had some coal stripped on our properties by others for us.

"Q. Do you lease any of your coal lands to anybody for production purposes?

"A. Yes. We have from time to time had leases with various companies down there. Particularly with respect

to our strip acreage because we are not strippers, and we have had people who have the equipment and the know-how in the stripping industry to do that stripping for us.

"We have also leased some small underground areas to other underground operators. We have at present one small lease with Hatfield-McCoy Coal Company, which is an underground operator.

"We have at the present time some coal leased to Pond River Collieries, which is owned by Peabody. That is strip coal.

4582 "We have an acreage of coal leased to the Ruby Chandler Jordon Company, which is a strip operator near Madisonville. We have some coal leased to the Badgett Mining and Stripping Company near Providence which is also strip coal.

"Q. You mentioned a moment ago that you had some lands leased to Peabody upon which they were conducting a stripping operation. How long — how far back have you leased coal lands, or a portion of your lands, to Peabody?

"A. Since the early '40s. They have stripped in two or three, or three or four, different areas on our property.

"We entered into one big lease in particular with them in which — at that time they were Sinclair Coal Company of Kansas City, and, of course, that company was merged into Peabody. That goes back to the early 40s when the Homestead Mine was developed on our property. We sold the coal. In fact, we helped in some respects to put the mine in but it was their mine and they operated it on our property.

"Q. Did you get the coal from their operation or did they sell the coal themselves?

"A. We sold the coal.

"Q. Now, in the coal that is being produced now on this contract, the lease you have with Peabody, what about the sale of the coal?

4583 "A. We have the option of selling the coal. Frankly, the coal business has been such of late that

we are selling part of it. We haven't needed the tonnage. And, consequently, under our lease with them, they have a right, if we do not sell the coal, to either sell it themselves or let someone else sell it in order to operate the mine, and at the present time they are selling most of the coal from that mine because we don't have the business to keep the mine running.

"Q. Is that lease with Peabody similar to the leases you have with the other companies that are operating, in the main?

"A. Very similar; yes, sir.

"Q. Are the mines of West Kentucky mechanized mines?

"A. Yes, sir, they are all mechanized.

"Q. Give us a short history of your mechanization.

"A. We started our mechanization program in late '40 and there was a transition from hand-loaded mines to mechanized mines. I would say that our mines became completely mechanized in about 1943 or '4.

"Q. What about the mechanized equipment, machinery or equipment as to improvement? What have you done with reference to improving the mechanization in your mines?

"A. Well, of course, we try to keep abreast of all improvements. We only have one what is known as a 'continuous miner', which we use somewhat as a guinea pig.

"The balance of our mechanization is with con-
4584 ventional loading machine, equipment that goes through the cycle of drilling, cutting, shooting, and loading the coal. And in a continuous miner, of course, that is all done in one operation.

"Q. My attention is called to the fact that you stated—I didn't catch it at the time—that you started mechanization in the '40s or late '40s and finished in 1943. What is your statement so we have the record clear on that?

"A. What I meant by that was that we put in our first mechanized mine in the late '40s and was successful, and so then we gradually converted to complete mechanization

which — I am trusting to my memory, but I think that completion was about '43, 1943.

"Q. You said you started in the late '40s and finished in '43. Do you mean late in the year 1940?

"A. Yes, late in the year 1940. It took us two or three years to complete that transition from the hand-loading mine to the mechanical operation.

"Q. So it was in the latter part of 1940 that you finished the mechanization in 1943?

"A. That is right.

"Q. Was there in the same operating territory formerly a mine company by the name of Nashville Coal Company?

"A. Yes. Nashville Coal Company started as a
4585 sales agency or a jobber, coal sales agent, and they eventually became interested in actual production and in properties and acquired coal lands and developed into a right substantial operating company in the field.

"Q. In the early 1950s where were the operations of the Nashville Coal Company, I mean its territory on land on which it was producing?

"A. Principally in the same areas that we were working ourselves. They had mines in Muhlenberg, mines in Hopkins County, mines in Union County and Western Kentucky.

"Q. Did the West Kentucky Coal Company acquire the Nashville Coal Company and its properties?

"A. Yes, after negotiating during the year 1955, we entered into a deal with Nashville Coal Company, which was signed September 13, 1955, effective October 1, 1955.

"Q. And in that contract did West Kentucky Coal Company acquire all of the properties formerly owned by the Nashville Coal Company?

"A. Yes. We acquired the physical properties, the mine sites, the machinery, their boats, barges, and then we entered into a lease on their coal lands.

"Q. And you presently hold the lease that they had on coal lands?

"A. That is correct.

"Q. You spoke about acquiring barges and so on
4586 which would indicate water transportation. Was West Kentucky ever engaged in transportation of coal by water?

"A. Well, yes, for many years in a right substantial way. I explained that the property was originally acquired for the purpose on the river — acquired on the river for the purpose of the reserve for the Union Electric Company of St. Louis, which was also on the river. Being on the river, for many years we operated towboats and barges up and down the rivers. We had river terminals at Memphis, Vicksburg, Donaldson, New Orleans, and on down.

"Q. Was that use of barge delivery of coal from your mines continued on continuously or was it abandoned or changed at any time?

"A. No. In time we gradually reduced our river activities and we had some river movement by others. Then when the North American Company, under the Securities Exchange Act, was ordered to integrate its properties, before they distributed our stock they gave the Poplar Ridge properties, which was our river properties, to the Union Electric Company, including our barges and so forth, and so *we* we were out of the river business for a number of years, because we had no property located on the river.

"Q. When you acquired Nashville Coal Company in '55, did they have river moving coal equipment?

"A. Yes, operating.

4587 "Q. Was it operating in the name of a subsidiary or division or what, if you recall?

"A. They operated under the name of the Potter Towing Company. It was either a partnership or separate corporate entity of some kind.

"Q. Did the properties that were formerly handled in the name of Potter Towing Company come to West Kentucky at the time you acquired Nashville Coal?

"A. That is correct.

"Q. Since that time have you engaged in the transportation of coal you produced both by water and by rail?

"A. That is correct, sir.

"Q. Into what areas do you deliver coal from your sales on water transportation?

"A. Well, we deliver coal up the Tennessee River as far as Guntersville, Alabama. We deliver coal along the Ohio, down the Mississippi, up the Mississippi by water.

"Q. Now, you also have rail deliveries?

"A. Oh, yes, all of our mines but one are located on rail.

"Q. Over what areas are your sales usually made, the general area in which your coal is distributed?

"A. Well, the area, our market area has changed over the years. There was a time when our principal market was in the South. Due to the inroads that gas made in the
4588 markets. I would say our primary market is probably North, Northwest, in the Chicago area, Iowa, Wisconsin. We export some coal to Canada, which coal is dumped through a terminal in Chicago. Now, of course, we market coal in Tennessee, and I am speaking chiefly of West Tennessee, Western Kentucky. We go as far east in Kentucky as Louisville.

"Q. In connection with the marketing of coal, do you sell coal to other companies as well as to customers?

"A. Yes, we have always done that to varying degree, depending upon what the situation was at the time. If we had surplus coal and there was a demand for coal, if we had coal on tracks, we often sold that to various sales agents or jobbers who marketed coal. They had a list of customers and we allowed them a commission on it.

"Q. Among other companies that you have sold coal to over the years, have you sold to Peabody?

"A. Yes, we have sold coal to Peabody before the merger of Sinclair with Peabody. We sold them substantial coal, a substantial amount of coal, and then after the merger, when the Sinclair Coal Company became Peabody and when their sales company, the Southern Coal Company, became

Peabody, we have continued to sell coal to Peabody, when they needed the coal or when it suited us mutually to act in that manner.

"Q. Has there been any difference in recent years on your sales policy in sales of coal to Peabody from
4589 what has been true throughout many years?

"A. No, sir, there has been no difference in the policy. The demand for coal might change the situation slightly. That is if they don't need the coal, we can't very well sell it to them, or if we don't need the coal, we wouldn't buy coal from them, when we had coal in our own mines, but the policy has not been changed in any way.

"Q. Mr. Eastin, have you prepared at our suggestion a tabulation showing the production of coal by West Kentucky?

"A. Yes, sir, I have a copy of that."

Mr. Rayson: We offer that as the next exhibit, your Honor.

The Court: Three hundred ninety-three.

(The tabulation referred to above was marked D393 and received in evidence.)

Mr. Rayson: "These figures, if I may explain, your Honor, in the last column marked 'national tons' are taken from the publications that are already in the record.

"Now, the figures under 'West Kentucky/Nashville' showing the number of tons produced per year come from the company records, and these have been examined and are in the record, but not combined in this form.

"Q. Will you explain, Mr. Eastin, what you mean or what we mean by this tabulation under production? How do you get the production and what figures are in-
4590 cluded?

"A. Well, in these particular figures they represent the tons of coal that were actually produced by us from our properties. Of course, there are two or three ways of figuring.

"Q. That is the reason I want to get it. How is this figured?

"A. Well, it is actually a count of the tons of coal produced from our property. Now, that does not include coal that was mined from our properties by someone else under these leases, and, of course, it does not include coal purchased by us from others for sale. That would be sale tonnage. This is actually production tonnage we produced ourselves.

"Q. Your own employees produced?

"A. Correct, sir.

"Q. I notice, beginning with the year of '53 and '54, under this column marked 'West Kentucky/Nashville', there is but one figure for each year. That is West Kentucky production because it was before you acquired Nashville Coal, Inc., is that right?

"A. That is correct, sir.

"Q. Now, beginning with 1955, while West Kentucky had been the owner of Nashville, have you separate records showing the amounts produced and so on?

"A. Yes.

"Q. Is the figure in 1955 and so on through the
4591 years where it says West Kentucky, the coal actually produced by what was West Kentucky Mines before and Nashville by what was — by the Nashville Mines before?

"A. That's correct. The Nashville figure, of course, is for October 1st in 1955."

Mr. Rowntree: I wonder if counsel can reconcile those production figures with those of Mr. Hicks.

Mr. Rayson: I think that the witness here explains that point there as Mr. Eastin acknowledge in his testimony there is some difference in it and the reason for that difference, as I understand it, is that there is coal produced from the West Kentucky Coal Company and Nashville Coal Company Mine, there is also coal produced from the Nashville Coal Company properties under contracts with others. I think Mr. McMahon referred to some of that today, and

there is also coal produced by others completely off of the property and sold by West Kentucky Coal Company.

Mr. Rowntree: There are production figures on this chart.

Mr. Rayson: What?

Mr. Rowntree: These are production?

Mr. Rayson: These are actually produced tonnages and, as I understand it, now, I think that their annual report shows a produced tonnage which may include some of this other coal that may be produced from their other
4592 lands under contract, that is.

* * * * * * * * * *

"Q. Mr. Eastin, in its production of coal and its operation, has West Kentucky operated at a profit every year from its earliest days down to the present time?

"A. Well, hardly. I probably should correct that and say a lot of the time we unfortunately operated at a loss.

"A review of the records of the company since its inception back in 1904 and '05, showed that they started off with losses in the early years. That was extended for seven or eight years, and then there have been other periods
4593 in the history of the company where you have had losses for as many as four or five years in a row, and then there's been periods of one or two years when you would have losses scattered through there.

"Unfortunately, the coal business, as I have observed it, and as I know it, is full of valleys and peaks. Sometimes it is described as a business where it's either feast or famine, and we have hoped that that would level out in time, but we still have the wide fluctuation, and in those periods when demand is light, why, coal companies sometimes have some bad information for their stockholders, I might put it that way.

"Q. Are there certain times of expense or charges, overhead, and so forth that must go on regardless of volume of sales?

"A. Oh, yes, sir. That is one of the problems of our

dustry, particularly in the Mid-West. You have got to roduce your coal and market it. You can't store it well the mines, and I refer in that respect particularly to coals roduced in the Mid-West, because there is a tendency, nless they are stored very carefully and impacted and red for properly, for this coal to ignite, to burn, and not nly will it catch fire, there is the expense of putting it on e ground and picking it up.

"Consequently what happens, you run until you
94 get your tracks full, that is of coal, assuming the market is slow, and then you have to move that coal run again. Well, then you might move the sizes that are demand, current demand, and there may be some sizes ere that you might refer to as resultant sizes that are left track, and in time those resultant sizes will develop to here you can't run your mines, and you have got obligaons for other sizes, so it creates problems.

"It is not like other industries where you can produce our product and store it and wait for a market to develop. hat situation is not quite as broad in the strip mining end our business as it is in the underground end.

"Q. Explain, please.

"A. Well, in a strip mine, you can go ahead and uncover a considerable degree the coal, and it is there for loading.

"Q. Just take off the overburden?

"A. Just take off the overburden and leave it in what ey call the pits.

"Q. Yes, sir.

"A. And when the market is there you put your shovels there and load it out and rush your production up to take re of the situation.

"But in an underground mine, which our company is principally operators, or which we operate mines,
95 you have got to move that coal every day or the mine can't run the next day.

"Q. During the years that are shown on this exhibit, hich runs from the years running from 1953 through 1960,

were any of those years, were the operations of the West Kentucky during any of those years operated at a loss?

"A. Well, yes. We operated at a loss in 1960, which is right embarrassing. It is always embarrassing — well, I said it is a little embarrassing to the president of the company to have to explain losses.

"Q. You always have to do it to stockholders, so explain to us, please.

"A. With 6,000 or 7,000 stockholders, and I even have to explain it to my family and young son why we lost money.

"Q. Well, go ahead.

"A. Anyhow, as I analyze the situation in this country, if we have a national economy of coal production at a level of about 500,000,000 tons, the coal industry is in a healthy state, and I would say practically all coal companies can operate satisfactorily and at a reasonable profit.

"Now, when the national production falls below 500,000,000 tons, as it did in '58, down to 405,000,000 tons, that is a loss of 95,000,000 — no, I beg your pardon — it fell
4596 from 490,000,000 tons down to 405,000,000 tons. That is a loss of 85,000,000 tons.

"Then the industry gets into what we refer as sometimes as a depressed state. That is, there is more capacity, there is more coal than there is business.

"Well, of course, every fellow feels that maybe he should operate his properties, and he's got good reasons to. Maybe he owes the banker, or he has mortgages of other types that he's got to take care of, so he makes a special effort to operate his properties, and in so doing, the effect is that you begin to depress the market.

"So, you have got your fixed expenses that you mentioned a moment ago, and you want to make these fixed costs, so you start trying to find business to operate your mines and the other fellow, he's in the same shape, and you gradually work the thing down until your realization has suffered, and the first thing you know you are in red figures.

"Now, that is not the fault of any one particular party.

It is a collective action that develops as a result of the circumstances.

"Q. What about the competition for markets when you have this overproduction or an underconsumption, whichever you want to say?

"A. It becomes very intense.

"Q. Ordinarily will it reduce the prices? Will it
4597 cause a reduction in prices?

"A. Very definitely, yes, sir, substantial. The longer it lasts, why, it seems the deeper the prices go.

"Q. Let's take your figures for 1956. I see you have them in front of you. Maybe we had better begin with 1955. They are not shown on this exhibit but they can be marked on it.

"Did West Kentucky during the year 1955 operate at a profit or loss?

"A. We operated at a profit in 1955 of "938,000 on a national production of 470,000,000 tons.

"Q. Tell us about the year 1956.

"A. We had a profit of $1,465,000 with a 500,000,000 national production.

"Q. Now, 1957?

"A. We had a profit of $1,254,000 with a national production of 490,000,000 tons.

"Q. Now we come to 1958 where you told us there was a loss.

"A. We had a loss of $204,000 with a national production of only 405,000,000 tons.

"Q. Let's take 1959.

"A. Then in 1959 we got back in the profit column with a 410,000,000 ton production and, incidentally, $410,000 profit.

4598 "Q. Now, what about 1960, if you have it there?

"A. We had $749,000 profit and the national production was 413,000,000 tons.

"Q. The 413,000,000 tons production is the national production?

"A. That is right.

"Q. Not your production?

"A. That is right.

"Q. Go ahead, you started to explain.

"A. The management would want to take credit for having made some improvements that got us in the profit column in those years, if I may.

"Q. Naturally. Mr. Eastin, was the loss suffered by West Kentucky Coal Company in 1958 due to a decrease in sales price carried on for the purpose of driving operators, any operators, out of business?

"A. No, sir, never. We were just trying to look out for West Kentucky Coal Company.

"Q. Did you have any agreement or understanding of any kind with any other coal producers on any reduction of price?

"A. No, sir.

"Q. Did you have any agreement among coal producers to reduce prices?

"A. No, sir, never.

4599 "Q. So far as you know did any agreement of that sort exist in the industry?

"A. No, there wasn't, that we ever heard of.

"Q. If it did you people did not participate therein?

"A. No, sir, in fact, we are trying to improve our realization, not hurt it.

"Q. Something has been said in this record about a contract for the sale of coal which the Tampa Electric Company had with certain producers of coal in the area in which you operate.

"Did West Kentucky Coal Company have anything to do with the original entry or making of that contract?

"A. No, sir. The first contract with Tampa Electric was made by the Nashville Coal Company on May 23, 1955, which was before we acquired the property.

"Q. While that was before you acquired the property, as you say, did you people enter into negotiations or par-

ticipate in any way in those negotiations for that contract?

"A. No, sir. We knew nothing about it.

"Q. Anything to do with the pricing or the price per ton that that coal was to be furnished at?

"A. No, sir.

"Q. Consulted about it in any way?

"A. No, sir.

"Q. And you, West Kentucky, was not in anywise
4600 interested in the making of that contract?

"A. No, sir.

"Q. When you purchased — when I say 'you', I mean West Kentucky — purchased the Nashville Coal Company, the Nashville Coal Company already had that contract?

"A. That is correct.

"Q. Did you acquire that as one of the items that was acquired in the acquisition of the company?

"A. That is correct, sir.

"Q. After having acquired that contract, what, if anything, was done with reference to that contract by West Kentucky?

"A. Well, initial deliveries were to start on that contract in March, 1957. We acquired Nashville Coal Company October 1, 1955, that is when we took the properties over. Much had to be done to get ready to deliver coal to Tampa. There was no coal moving down there at that time.

"I say, much had to be done, floating equipment, transfer equipment, unloading equipment — those things had to be constructed, so we immediately —

"Q. (Interposing) How would the delivery of that coal have been made?

"A. It would have been loaded on barges at Uniontown, Kentucky, floated downstream on the Ohio and Mississippi
to New Orleans, or to Wood Park, Louisiana, which is
4601 about 40 miles below New Orleans, and there it would have been unloaded from the barges onto the bank at the facilities that we constructed there for that purpose, and then it would be re-loaded or transferred to oceangoing

or Gulf vessels, for transportation across the Gulf to Tampa Bay where the Gannon Steam Plant is located, and those oceangoing vessels would have been unloaded at the power plant of the Gannon Station Power Plant and stockpiled and burned.

"Q. You refer to coal being produced or being mined at the Uniontown Mine. Was the Uniontown Mine one of those that West Kentucky acquired in its purchase of Nashville Coal?

"A. Yes, sir.

"Q. You spoke about the arrangement of equipment. When did West Kentucky begin the accumulation, purchase or manufacture of equipment and facilities to be used in connection with the movement of this coal?

"A. Well, we began almost immediately. In fact, Nashville had—Nashville Coal Company, already had some plans. For instance, they had a large towboat on the drawing boards.

"Q. Before you go further and explain, which I want you to do, you say 'we began almost immediately.' Explain 'immediately.'

"A. Well, just as soon as we took over the prop-
4602 erty we—

"Q. As soon as you purchased it?

"A. Yes.

"Q. All right. Go ahead.

"A. We first had to make a survey of the situation, and we employed consultants and determined, or attempted to determine just what the problems were, and then we had people bid on the construction of this equipment that was necessary, including a large towboat that was built particularly for the movement down the Mississippi, and we proceeded to get ready to make deliveries on this contract and we were crowded for time.

"Q. Now, in order to meet necessities at Tampa, was any temporary arrangement made?

"A. Well, during the course of the situation they ran

a little bit behind schedule in getting ready to receive the coal, and we were running behind schedule in our efforts to get ready to deliver the coal, and by mutual agreement the deliveries were set back a month or so. And then we finally delivered, I think it was 118,000 tons down there on a spot order because they needed to get some coal the ground, if that is what you have in mind.

"Q. Now, what happened with reference to this contract after you had started to get ready to fulfill it? Did anything occur with reference to the contract?

4663 "A. Well, we were taking a good close look at the contract. We had our attorneys going over the contract, and we had an opinion from our attorneys that the contract was illegal or invalid and was not binding on either party. And since it was a 20 year contract, we were spending a lot of money to get ready to move that coal down there, it was pointed out that unless a firm and binding contract existed that most any time that the oil market was such that they might want to come along and make lower prices to the Tampa Electric Company that we might be pitched out the window, so to speak, and that we had no binding contract and it should be made a binding contract.

"There were one or two factors in the contract, or provisions in the contract, that were not satisfactory, and so we then entered into negotiations with Tampa Electric people to make some changes in the contract and to make it binding and legal on both parties.

"Q. During the period of those negotiations, while you were trying to make certain you would be protected by a binding contract, did anything happen or did Tampa take any attitude on the situation or procedure?

"A. There was considerable negotiating back and forth which was unsuccessful, and in time Tampa notified us by letter they were terminating the contract. And then they also moved in the course to have a declaratory judg-

4664 ment made of the contract to determine whether or not it was a valid contract.

"Q. Now, the lawsuit that was filed to determine th validity of that contract which your attorneys questioned was filed not by you but by Tampa?

"A. That is correct."

"Q. I take it you did not request Tampa to cancel th contract?

"A. No, sir. We implored them to continue to negotiat with us and work with us, and we had every intent of filling the contract some way, somehow, but we wanted a firm and binding contract before we started making deliveries under it.

"Q. Was any coal ever shipped by you on that contract?

"A. Not on the contract; no, sir.

"Q. You did have this spot order that you mentioned?

"A. That is correct.

"Q. According to this record some time after this, shortly after probably, Tampa Electric entered into a contract with Peabody Coal Company. Did you participate in that entry, have anything to do with it?

"A. No, sir, none at all. In fact, we felt that that business, having—we had bought that business from Nashville Coal Company, had pioneered the movement down
4605 there, and we felt that was our business and we did not like it much when Peabody went in and meddled into it and finally made a contract. That is the situation.

"Q. So that you did not cooperate or have anything to do with Peabody obtaining that contract?

"A. No, sir. We didn't cooperate to the extent that they came to us and wanted to use our unloading facility at Tampa and we refused to do it. They took the position it would be better for the unloading equipment to be working than sitting there rusting, but we didn't want them moving coal to Tampa Electric. We wanted to work that out for ourselves.

"Q. Did you take any attitude in connection with the negotiating between West Kentucky and Tampa or the procedure that occurred for the purpose of getting released

from that contract so that you could use, using the expression used here, dump coal that otherwise would have gone there into the TVA market and thereby depress it?

"A. Oh, no, sir, never.

"Q. Did you ever have any such purpose or motive at all as far as West Kentucky was concerned?

"A. Certainly not.

"Q. Ever have any negotiations with anybody or looking for any accomplishment of any such purpose?

"A. No, sir, never.

4606 "Q. Or any intent upon your part to do anything of that sort?

"A. No, sir."

* * * * * * * * *

4611 "Q. After time went on and some time after Peabody did get in there and take this market away from you, did you make an arrangement in which you might ship some coal down there?

"A. Yes, sir. We entered into an arrangement with Peabody whereby we would share one-half of the tonnage.

"Q. Has any coal ever been shipped on that arrangement?

"A. No, sir; not yet.

"Q. Do you know that there is existing in Memphis recently constructed a municipal steam generating plant?

"A. Oh, yes.

"Q. Did West Kentucky enter into competition to obtain sales of any of its coal to the Memphis Steam Plant?

"A. Yes, sir.

"Q. As a result of those negotiations, was West Kentucky awarded a contract?

"A. Yes, we were awarded a contract for—I

4612 think it was for ten years at a rate of about 25,000 tons per month.

"Q. And you are engaged in delivering on that contract now?

"A. Yes, sir.

"Q. Did the entry of West Kentucky into that contract have as a purpose any depression or interfering with the coal market in East Tennessee or in any other TVA area?

"A. Certainly none that I know of. I can't conceive of it.

"Q. Did other people also get awards at the same time from the Memphis Steam people?

"A. Yes, sir, they awarded the business to three concerns.

"Q. Can you name them for us, please?

"A. Peabody Coal Company and Pittsburgh-Midway Coal Company.

"Q. Somebody said something in this record a day or two ago, maybe it was further back in the depositions, I don't recall, about Kirkpatrick Company being awarded a portion of that coal. Do you know anything about that?

"A. Well, the Kirkpatrick Coal Company's main office is in Memphis, and they have been there for many years and they don't have facilities for putting coal on water. They can ship their coal to Grand Rivers and load it on water there, but because of the rate between their
4613 mines and Grand Rivers, they wouldn't be competitive. They acted as sales agents in the thing. That is, they acted as salesmen and we agreed for their help in selling the order, that we would pay them, I think it was 7½ cents a ton as a commission on one third of our award.

"Q. When you say 'we', are you referring to West Kentucky Coal Company?

"A. Oh, yes, West Kentucky Coal Company.

"Q. That was your own contract with them and not the group?

"A. That is right.

"Q. You had no joint agreement?

"A. No.

"Q. Are you shipping on that order or on that contract to Memphis?

"A. Yes.

"Q. Have you sold coal to either of the other parties who received bids on there, on that contract or on that award, for delivery under their contract to Memphis?

"A. Yes, we have been shipping Peabody's order of late for them by agreement with the Memphis power people and agreement between ourselves and Peabody.

"Q. So you are selling to Peabody the coal that they would furnish on that contract?

"A. That is right.

614 "Q. Now, was there any agreement in connection with that sale or that coal that you made to Peabody, that that was done for enabling Peabody to dump other coal into the markets and thereby depress the markets?

"A. Oh, no, sir.

"Q. Any such understanding or promise or agreement of any kind?

"A. No, sir.

"Q. Is that simply a straight sale by you to Peabody of that quantity of coal?

"A. That is right. You understand we make the delivery, too.

"Q. Yes. You sell the coal and you make the delivery of it?

"A. That is right.

"Q. Does that coal come from your own production?

"A. From our Uniontown Mine.

"Q. So that you are selling it as a delivered coal to Memphis?

"A. That is right. But Memphis pays Peabody for their coal. They pay us.

"Q. In other words, you haven't even taken over the contract then? It is a contract between Peabody and Memphis and you sell the coal and you get your compensation from the person to whom you sell it, namely Peabody?

615 "A. That is right.

"Q. You say there are no side agreements of any

thing with reference to any other deliveries or sales in connection with that?

"A. No, sir.

"Q. Mr. Eastin, what about sales of coal to Tennessee Valley Authority? Yesterday I believe your man Hoffman stated they began the sales in the early '40s somewhere. Have you personally handled those sales to TVA?

"A. No, sir. Mr. Hoffman, that is his account. He looks after the sales to TVA.

"Q. Have you done any of the negotiating for sales of coal by West Kentucky to Tennessee Valley Authority?

"A. No, sir.

"Q. So far as you know has there ever been any cutting of prices or depressing of prices in the sales that have been made by West Kentucky to TVA for the purpose of forcing out some small operators or other operators and take them away from the TVA market?

"A. No, sir, never.

"Q. Ever been discussed in your presence as president of the company?

"A. Never.

"Q. So far as you know has there ever been any discussion among any company personnel?

4616 "A. No, sir.

"Q. Any authority ever been granted by the West Kentucky Coal Company to do any such thing?

"A. No, sir.

"Q. As far as the actual sales and negotiations or submitting of bids, Mr. Hoffman looks after that?

"A. That is correct, sir.

"Q. Does the West Kentucky Coal Company have a collective bargaining agreement with the United Mine Workers of America?

"A. Yes, sir.

"Q. When did West Kentucky first enter into a collective bargaining agreement with the union, United Mine Workers of America?

"A. Oh, our first contract was signed with the United Mine Workers on February 15, 1954, effective March 1, 1954.

"Q. Did you personally sign the contract or was it somebody else in the company?

"A. No, sir. The then president signed the contract.

"Q. Was that Mr. Hooper Love?

"A. Yes.

"Q. Is he dead now?

"A. Yes, sir.

"Q. Before that contract was signed, what, if anything, did you do to ascertain whether or not the United
4617 Mine Workers of America had been chosen as a collective bargaining agent by your employees?

"A. Well, the United Mine Workers first advised us in writing that they represented a substantial portion of our employees and asked us to enter into — to bargain with them. We replied by letter that we would bargain if they could show us that they represented the majority of our employees. From there on there were a number of meetings held, which I participated in, in which they brought in membership cards, signed cards, and at first we took the position that they didn't represent a majority of our employees. There were certain discrepancies in some of these cards as we saw them and we —

"Q. What type of discrepancies, just briefly?

"A. Well, the names didn't gibe with our payroll names in some instances. In fact, I recall there were some cards presented where we knew the men couldn't even write that were signed. Well, we said, 'We can't accept those cards.'

"Well, the cards were returned and the man made his mark and they brought them in later and we were satisfied that they were valid cards.

"There would be occasions where maybe a card would be, for example, signed 'Harry Jones', when our payroll records showed that we — didn't show us having a Harry Jones, might have H. G. Jones. We said, 'We don't
4618 have a Harry Jones.'

"They said, 'That is the fellow so-and-so.'

" 'Well, you will have to correct that.'

"So the card would go back and then eventually come back signed properly. We compared the cards to the signatures that we had in our payroll department, and in time about—I think the last meeting was about December 10, '53, it became definitely evident that they had a majority, represented a majority of our employees.

"Q. That having been ascertained, did you then enter into the collective bargaining agreement?

"A. Yes, sir, we signed the contract in February, the following February.

"Q. Since then there have been several amendments made to the 1950 collective bargaining agreement of the United Mine Workers. Have you people joined in *the* those amendments?

"A. Yes, sir. We have continued right through.

"Q. Have you signed any of the extensions or amendatory agreements personally?

"A. I signed the second one, yes, sir. After the original contract with the union, I signed the next one.

"Q. And the others have been signed by others as representatives of your company?

"A. Well, the president signed the first one, I
4619 signed the second one, and I think, I am sure by that time we had joined the coal producers, the West Kentucky Coal Producers Association, who have signed for us since. They represent the other union — the other operators who have contracts with the UMWA.

"Q. But your company has been and is now, has been since 1950, December '54?

"A. Fifty-four.

"Q. And is now a party to this United Mine Workers Collective Bargaining Agreement?

"A. That is right.

"Q. During the period that you people have been under this contract of the United Mine Workers of America, has

that organization or any officials thereof attempted to dictate to you or your company selling policies?

"A. Oh, no, never.

"Q. Pricing?

"A. No, sir.

"Q. Tried to dictate anything in connection with the management prerogatives?

"A. No, sir.

"Q. Have they influenced pricing policies, that is when you would price to TVA, that you had to meet certain standards or anything of that sort?

"A. No, sir, never.

4620 "Q. Have you or your company at any time since 1950 enter into any agreement of any type whatsoever or done anything at all toward a joint policy with Island Creek Coal Company, Peabody Coal Company, Pittston Coal Company, Pittsburgh-Midway Company, Pittsburgh Consolidation Company or any other coal company for the purpose of arranging prices for the sale of coal in the territory in which you sell?

"A. No, sir.

"Q. Or for the purpose or with the intent either of depressing the market for the sales of coal in the area?

"A. No, sir.

"Q. As far as you are aware, has anything been done by West Kentucky with reference to accomplishing the results I have just referred to?

"A. No, sir, nothing that I know of.

"Q. Or taking the same questions, premise, for the purpose of eliminating from the industry any coal producer, large or small?

"A. No, sir.

* * * * * * * * * *

4623 Mr. Rayson: Your Honor, we turn now to a deposition of Mr. T. J. Hoffman, whose testimony in the Pennington case has already been read. This testimony was taken by Mr. Van Derveer in this case on September 11,

1962. We expect to read a part of this only, beginning at Page 76.

T. J. HOFFMAN

DIRECT EXAMINATION

(Mr. Rayson read the questions and Mr. Owens the answers.)

"Q. Will you state your name, please, sir?

"A. T. J. Hoffman.

"Q. By whom are you employed?

"A. West Kentucky Coal Company."

"Q. In your sales capacity, have you handled the negotiations in behalf of your employer with the Tennessee Valley Authority for the sale of coal?

"A. Yes, sir, I do.

"Q. Now, Mr. Hoffman, are you the individual in the company who handles that phase of West Kentucky Coal Company's business?

"A. Yes, sir.

4624 "Q. Does anyone else, is there anyone else above you that directs that or handles it in any way?

"A. No, sir, they do not."

Mr. Rayson: Turn to Page 78, Line 22.

"Q. Did you negotiate the two present contracts?

"A. Well, I didn't negotiate any contracts. I made a bid.

"Q. Perhaps I used the wrong word. Just in your own words, explain to us.

"A. And received an award.

"Q. Just explain to us in your own words how it came about that the West Kentucky Coal Company now has these contracts?

"A. We received an invitation to bid if we had coal to offer. We had coal to offer and we filed a bid. It was a public opening. There were at least 50 people there that took down the bids.

"Q. Where did this take place?

"A. At Chattanooga.

"Q. And you are referring now to which contract?

"A. Well, all of them.

"Q. All right, sir.

"A. All the contracts that I ever made with them.

"Q. All right, sir. Go ahead.

"A. And we received an award.

4625 "Q. Mr. Eastin has told us that you have two contracts with the TVA today, I believe?

"A. Yes, sir.

"Q. And what do those contracts call for or provide for?

"A. One contract calls for 850,000 tons of coal annually and the other calls for 2,000,000 tons of coal annually.

"Q. After the exercise of an option, I believe?

"A. Well, I don't know that you'd call it an option. The way the bid was filed, it was all filed at one time at a public opening. The offering was for 2,000,000 tons of coal annually but feeling, perhaps, the quantity might prevent an award because they were only going to buy so much coal, I specified in the bid that we would accept an award for 1,000,000 tons and they elected to buy the million tons with a deferred award perhaps on the second million. It is all included in one bid."

Mr. Rayson: Turn to Page 81, Line 19.

"Q. What part of the 850,000 contract or the 2,000,000 contract, what part of that coal, if any, goes to the Widows Creek Steam Plant?

"A. None. We have never shipped a pound of coal to the Widows Creek Steam Plant.

"Q. Do your records here show where this coal

4626 was shipped?

"A. Oh, yes. I can tell you where it was shipped.

"Q. Where was it shipped?

"A. It was shipped to Shawnee, it was shipped to Grand Rivers, it was shipped to Gallatin, and at the present time we are shipping coal to Florence, Alabama, for the Colbert Steam Plant. That's the only plants we have ever shipped.

"Q. Now, you know along in mid-1960 there was an L&N freight reduction for the shipping of coal from Gallatin to Widows Creek, was there not?

"A. That's right.

"Q. Tell us what you know about that.

"A. Yes, sir. But we never shipped any coal to Widows Creek.

"Q. Just in your own words, Mr. Hoffman, tell us how that freight rate reduction came about.

"A. Well, I couldn't tell you how it came about because I had nothing to do with negotiating that rate?

"Q. You make it your business to stay familiar with those things, do you not?

"A. First I knew that the rate had been nominated or agreed to by the L&N Railroad was when I received a written instrument from the TVA about two weeks prior to the opening of bids specifying the rate. Every man that
received an invitation to bid also received a notice
4627 of that rate.

"Q. What do you mean when you say you received an 'instrument', a letter?

"A. Well, no, it was a printed form just like the invitation to bid. It was an addendum, or whatever you want to call it.

* * * * * * * * * *

"Q. In fairness, Mr. Hoffman, let's recapitulate and try to clear it up. The rate, do I understand you correctly, or put it in your own words, it was from where to where?

"A. I don't recall, I'd have to look it up, but the present rate was or this established rate, which was a Section 22
rate, was $1.55 from Western Kentucky mines to
4628 Widows Creek or Bridgeport, Alabama, that's where the plant is located, and it was predicated on a volume movement, and as I understand it the volume now has arrived at a point where the rate from Western Kentucky is now $1.50 a net ton.

* * * * * * * * * *

"Q. What difference did it make in your bid that there had been a reduction to $1.55?

"A. Well, as far as my bid was concerned it made no difference at all because I offered the coal to them F.O.B. car mines and they decided and always decide where they are going to ship the coal. I have no control over that.

"Q. They simply notified you that there had been a reduction, is that what you are saying?

"A. No, sir. They notified, I suppose, because they didn't want any bidder to feel that, for instance, that he was working in the blind, that he didn't know what his rate was going to be on what coal that may be offered. I suppose that was the object.

"Q. They notified you then that the rate of a shipment of coal on the L&N would be $1.55 per ton from your
4629 mines here in West Kentucky to Bridgeport, Alabama?

"A. From all mines in West Kentucky, not only mine."

Mr. Rayson: Going to the bottom of Page 85.

"Q. Did you make a bid and submit it to the TVA for an F.O.B. mine price?

"A. Yes, we submitted a bid.

"Q. Did you get the bid?

"A. I got an award, not all of it.

"Q. What award did you get and for how much?

"A. Well, I think I got an award, as far as I recall it, 850,000 tons a year.

"Q. Which is the contract that was 15 years at 850,000 tons annually?

"A. That's right.

"Q. Now, then in obtaining that bid for the 850,000 tons, was it, from the Tennessee Valley Authority's viewpoint, based upon a freight rate of $1.55?

"A. No. I am telling you they made an award and never took a pound of coal to Widows Creek. All the coal went to Gallatin, Shawnee and Paducah, and to Grand Rivers.

"Q. On that contract?

"A. On that contract. Still going there.

"Q. Do you know where other coal was diverted to the Widows Creek Steam Plant and this coal that you are shipping then went in there?

4630 "A. No, I don't know anything about that because there are probably 25 different suppliers from West Kentucky and I don't know where they are shipping. The Tennessee Valley has a traffic department and they control the movement of the coal."

Mr. Rayson: Page 87, Line 9.

"Q. Did you know that this freight rate reduction was being discussed?

"A. No, I did not.

"Q. What is the very first information, sir, that you ever had that the TVA was trying to get a freight rate reduction?

"A. Well, now, I assume they are always trying to get a freight rate reduction. They may be working on one right now, but they don't take me into their confidence on those things and I had nothing to do with it. The first I knew of it was when I received this addendum stating that on bids that were going to be opened a rate from the Western Kentucky mines to Kingston would be $1.55 for the benefit of evaluating the heating value of the coal."

Mr. Rayson: It should be Widows Creek.

Mr. Owens: Widows Creek.

Mr. Rayson: Turn to Page 92.

"Q. Prior to this freight rate reduction, now I am referring to the $1.55, did you have any discussion at all

4631 regarding that with any member or with any of the officials of the United Mine Workers of America?

"A. None whatsoever, never discussed any freight rates with any member of the union.

"Q. Did you ever have any discussion regarding that freight rate with any official of the L&N Railroad?

"A. None.

"Q. But it was only by reason of that freight rate reduction that you were able to get your two million dollar contract, was it not?

"A. Why, certainly not. I have never shipped a pound of coal there. I got the contract for other plants. I have never shipped any coal to John Sevier, never shipped any coal to Kingston, never shipped any coal to Oak Ridge."

* * * * * * * * * *

Also a deposition taken by Mr. Van Deverr on the same day of Mr. Mark Eastin, Jr., and we desire to read a part of that beginning at Page 2.

MARK EASTIN, JR.

DIRECT EXAMINATION

(Mr. Rayson read the questions and Mr. Owens the answers.)

"A. Will you state your name, please?

"A. Mark Eastin, Jr.

* * * * * * * * * *

4632 "Q. I take it, Mr. Eastin, that you are president of the West Kentucky Coal Company?

"A. That is correct."

* * * * * * * * * *

"Q. You have told us heretofore that the West Kentucky Coal Company entered into the National Bituminous Wage Agreement on the 15th of February, 1954, to become effective March 1, 1954. Now, who were or what officers of the West Kentucky Coal Company did the negotiating with the United Mine Workers which resulted in that contract or the signing of that contract?

"A. Well, I was active in it. In fact, probably took the lead. I had others around here that assisted me in it. Again, the UMW of A came in and advised us, I think in writing first, that they represented a majority of our men, and we asked them for proof, and in time they satisfied us with proof in the form of signed cards, after considerable in-

vestigation of signatures and returning cards, and the usual maneuvers that go through, and it became apparent
4633 that they did represent the majority of our employees and we entered into a contract.

"Q. Was that the same contract that is referred to now as the National Bituminous Wage Agreement of 1950 with the amendment?

"A. Yes, with the amendment.

"Q. That is the industry-wide contract you are referring to?

"A. That is correct."

Mr. Rayson: Page 37.

"Q. Has the West Kentucky Coal Company continued to be a party to the National Bituminous Wage Agreement each year since it first became a party?

"A. That is correct.

"Q. Who each year, if you can recall, sir, handled the negotiations for the West Kentucky Coal Company which resulted in your company signing the contract?

"A. Well, I signed the contract the second time it was signed and we are members of the West Kentucky Coal Producers Association which carries on the negotiations incident to the contract.

"Q. Now, I am just not sure that I quite understand, Mr. Eastin, and if you will be good enough to amplify that statement a bit, one, the members of this association and where the renewal negotiations take place and how
4634 they take place.

"A. Well, the West Kentucky Coal Producers Association is an association of operators who are operating under this contract and they handle labor cases and related matters, and when contract time comes around or time comes to sign a contract, they sign for all of their members.

"Q. What are the geographical location limitations of this association?

"A. Well, the Western Kentucky field.

"Q. Which is defined as those coal lands located where?

"A. Principally in Union, Webster, these are counties Hopkins, Muhlenberg, Ohio, Daviess and probably Christian. I don't know that they had any members that operate in Daviess County."

Mr. Rayson: Turn to Page 39, Line 8.

"Q. What are the duties of this association?

"A. Well, to carry on the business related to operation under the contract with the UMW of A. They have quite a bit to do with labor cases that come up. They sometimes go a little further afield and get into reclamation, litigation —not litigation — legislation and matters such as that."

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4636 "Q. Mr. Eastin, have you ever met with any representatives of the union or the L&N Railroad regarding the change in the freight rate about August 1, 1960?

"A. Well, I would say this, that every time I see the president of the L&N Railroad or the IC Railroad, socially or on business, I am trying to get them to reduce the freight rates because transportation of coal is too high, in my opinion, and it has retarded the development of the coal business. We are constantly trying to get freight rates reduced, not only on the railroads, by any other method. It behooves us to do it.

"Q. Did you ever meet with a representative of the union, a representative of the TVA and the L&N Railroad regarding reduction of freight rate?

"A. Never, no, sir.

"Q. At no time?

"A. Never at no time.

"Q. Did any member of the West Kentucky Coal Company do so?

"A. Not to my knowledge there was never any meeting like that.

4637 "Q. Have you interrogated Mr. Hoffman specifically about that?

"A. I have.

"Q. And his answer?

"A. No.

"Q. Were there any meetings with any representatives of the West Kentucky Coal Company immediately prior to the reduction of the freight rate by the L&N from Gallatin, Tennessee, to Widows Creek?

"A. I had no meeting. I don't know about some of our other fellows may have talked to the L&N Railroad about that time but we are constantly after them about these rates."

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Mr. Combs: If the Court please, this is the testimony of S. L. Jewell, given in the Pennington case in April of 1961, starts out at Page 1249.

S. L. JEWELL

DIRECT EXAMINATION

(Mr. Combs read the questions and Mr. Owens the answers.)

"Q. Would you state your name, please?

"A. S. L. Jewell.

"Q. Where do you live, Mr. Jewell?

"A. St. Louis, Missouri.

4638 "Q. I believe you are with the Peabody Coal Company, is that correct?

"A. That is correct.

"Q. And what position do you hold with Peabody Coal Company?

"A. I am one of the vice presidents of the company.

"Q. What is your area of responsibility?

"A. Primarily in sales and company business related to sales.

"Q. And how long have you been with Peabody Coal Company?

"A. With Peabody Coal Company, itself, only since 1955.

With one of the companies that went into the merger that formed Peabody Coal Company since 1949.

"Q. Now, Mr. Jewell, since you have been with Peabody proper since 1955, what position have you held?

"A. The same as I just described.

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4640 "Q. Mr. Jewell, in your experience in coal sales, have you had occasion to sell coal to the TVA?

"A. Yes, sir.

"Q. How long have you been selling coal to the TVA?

"A. Oh, for 12 years or more.

"Q. Have you dealt with TVA on term contracts for coal and also on spot contracts for coal?

"A. I have dealt with them on term contracts considerably, very little on spot because our company has not
4641 been active on the spot market of TVA to any appreciably extent. In fact, we have not had a spot order to my knowledge in more than three and a half years."

Mr. Combs: Drop down to the question.

"Q. What sort of a market does the TVA spot market furnish for Peabody?

"A. It has not furnished a lucrative one. One we have not been able to compete in. We have bid pretty consistently, I believe. I will have to qualify — I am practically certain of it. We bid practically every month and we haven't had a successful bid in three year, I believe.

"The chart may show differently, but that is the best of my recollection.

"Q. During the period of 1956 and 1957, did you have certain successful contracts in the TVA spot market?

"A. I wouldn't call a spot order a contract.

"Q. Well, a spot order.

"A. We had evidently certain small spot orders as shown here. I said we had had a few, but relatively few; negligible by comparison with our size and our tonnage and purchases of TVA.

"Q. How would you go about arriving at the price at which you bid for one of these spot orders?

"A. Well, by just the same processes of judgment and assessing the market as you would anybody else. You
4642 view as best you can what the recent market history has been in that selling area, compare that with what you know of the market generally, from your reports, from your sales force and your own contacts with the market, and determine what the lowest price you think you would need to quote to have an opportunity to get favorable consideration and then determine what price you are willing to sell your coal at, and whatever you can square that off, determine the price.

"Q. Did you keep up with the bids that have been submitted to the TVA spot market?

"A. I pretty well lost interest in them two or three years ago because we were so uniformally unsuccessful in it.

"Q. Did you prior to that time?

"A. Oh, yes, and I do now. They come in to me occasionally and say, 'We would like some little bid. What price?'

"And we go over it together and I say, 'Quote this and that price won't get an order probably.'

"And they say, 'No, it might.'

"If we need some more tonnage, 'Can we go a little further?'

"And I confer with my associates. 'Can I go lower than that?'

"And they say, 'No, that is the lowest, whether we get the order or not.'

4643 "And I don't pay any attention. And a few days later they will tell me that we were competitive or we weren't. And for a long time now the report has been that we were not.

"Q. Mr. Jewell, what part of the TVA system would you make your bids to, to the western division plants or to the eastern division?

"A. We don't specify that. I believe I am correct in saying TVA reserves the right normally and habitually of taking any tonnage it may purchase from you and sending it to any plant that it finds advisable and desirable. The plants we would have in mind being able to reach primarily from the Western Kentucky field, which is where we bid from primarily, would be the Shawnee plant, the Johnsonville, Tennessee, plant and the Colbert, Alabama, plant.

"Q. Do you know if you have ever sold coal to Kingston or John Sevier?

"A. I am positive we have never sold any to John Sevier. Whether the TVA ever took any of our coal as far as Kingston, I have no way of being sure. They wouldn't normally do so and have not done so. It never came to my attention if they did.

"Q. Would your mines, would you consider your mines to be competitive in the Kingston and John Sevier area?

"A. Positively not.

"Q. Why would they not?

4644 "A. The distance from the market, unfavorable relative freight rates."

"Q. Now, in dealing on the TVA spot market, Mr. Jewell, to the limited extent that your company did, I would ask you if in any manner the United Mine Workers of America conferred with you or suggested to you in any way the price at which you ought to offer your coal?

"A. Never at any time in any way.

"Q. Did any other coal companies make any suggestions to you in that regard?

"A. No, sir.

"Q. In offering your coal and in selling your coal to the TVA on that market, did you have any intention of depressing the price of that market?

"A. Absolutely not. We hoped to see it get up to where we could participate.

"Q. And in selling and offering your coal on that market,

did you have any intention of running out of business any operators in East Tennessee?

"A. No, sir, we have busy staying run out ourselves so far out of that market.

"Q. Now, I want to ask you about the activity of Peabody Coal Company with reference to term contracts with the TVA. What has been your experience with a term contract with the TVA, Mr. Jewell?

4645 "A. I am not sure I can recall offhand my first experience. We consider anything a term contract — well, about — I guess the shortest ones we have had have been, at any time, three years. We may have had as early as 1949, '50, some 2-year or 3 term contracts of relatively small size. The first term contract of consequence that comes to my mind is one made in the year 1952, which was a 10-year contract and which will expire next year.

"Q. What was the tonnage involved on that contract?

"A. The base tonnage set forth was 500,000 tons annually, with the TVA reserving the right on its own option to increase the tonnage by the amount of 20 per cent or decrease it by an amount of 20 per cent.

"You say that was the tonnage. The tonnage has developed to be 20 per cent less. They very shortly after the contract went into effect made the 20 per cent reduction, so we have been shipping at the rate of 400,000 tons annually on that contract.

"Q. You are now and will continue to do so until 1962?

"A. We trust so. We are now.

"Q. Have you negotiated other term contracts of consequence with the TVA?

"A. Yes, we have had a number of them during the interval from 1952 — we have had — I couldn't tell

4646 you how many — a number of 3-year contracts. Principally our short-term contracts have been 3-year contracts. Say a number of them, maybe a half dozen of them. I would have to refer to the records to know. Most

of them are relatively small contracts, maybe for 25 or 50,000 tons a year.

"I am not testifying accurately on that. It is just from memory. We haven't had any of great consequence of very substantial tonnage until the contract which was negotiated in 1959 and which has not yet become effective and will not become effective until 1962 and that is a much larger contract.

"Q. You have reference to the contract for the Paradise Steam Plant?

"A. Yes, sir.

"Q. Is that the steam plant in Kentucky shown on this chart on the blackboard?

"A. It would be Muhlenberg County, Kentucky, on the Green River, directly east of Drakesboro, Kentucky, near the small village of Paradise, Kentucky. Yes, sir, that is it."

Mr. Combs: They were pointing to a map and I think this is descriptive enough of the map.

"Q. Now, is that plant in operation at this time?

"A. No, sir.

"Q. Do you know when it is expected that it will go into operation?

4647 "A. It is expected to go in operation in the fall of 1962.

"Q. What is the quantity of coal called for by that contract?

"A. The contract specifies that the rate of shipment, as I call it, will be for the first six months of operation at a rate of 2,000,000 tons annually; thereafter at a rate of 4,000,000 tons annually until a total of — I am confident it is 65 or 66,000,000 tons has been shipped.

"Q. And over what period of time?

"A. Well, that mathematically would require, I believe, 17 years, the way I recall it.

"Q. Now, does Peabody Coal Company have property near the site of the Paradise Steam Plant?

"A. Oh, yes, that is why we made — were able to make the contract.

"Q. Where is that property located?

"A. The property is west of the plant. Some of the property is slightly southwest, but principally to the west immediately adjoining the plant site.

"Q. Is that — you mean it immediately joins the property on which the Paradise Steam Plant is located?

"A. That is right.

"Q. Now, with reference to the Paradise contract, and the other contracts that you entered into with the
4648 TVA, how did you come to submit a bid on behalf of Peabody?

"A. In an effort to sell coal, that's our business to sell coal. They are the coal user that announced their position to buy coal, and our business is selling coal. We were looking for business. We acquired acreages and property for the purposes of developing mines on them and selling the product, so it is a logical development for it.

"Q. Does the TVA submit an invitation to you to enter a bid?

"A. Oh, yes. Not us. They submit it publicly. They publish the fact that invitations are to be submitted, and all who want one can ask for it, and we always ask, and we are on the list to receive it now after having asked along with coal companies generally.

"Q. And does the TVA in those invitations specify in general the quality or quantities of coal?

"A. It leaves great leeway in that. It usually tells the amount they intend to purchase, sometimes exactly, sometimes approximately, but the bidder has leeway in how much he wishes to offer.

"Q. Now, again with reference to the Paradise mine, or Paradise Steam Plant, does your property near this Paradise Steam Plant contain any particular amount of coal? How much coal does it contain?

"A. It contains, we estimate, 66,000,000 tons.

4649 "Q. Is that why you were interested in selling coal to the TVA in that quantity?

"A. Yes, sir, we wanted to sell the coal from this property, that is why we had acquired the property 10 or 12 years ago. We thought it was an advantageous site, good coal mining conditions, so we were willing, and willing to sell the entire amount of it. That is the way we like to sell it.

"Q. Had you attempted to sell it before?

"A. Many times to groups of utilities and individual utilities.

"Q. Had you done any developing of that property with respect to mining it prior to—

"A. No, sir, no.

"Q. Now, with regard to the term contracts that you have entered into with the TVA, how you determined the price at which you would offer your coal?

"A. Just a matter of judgment. The way we determined the price ordinarily is how—we know it is a highly competitive market, the entire coal market is highly competitive, and we simply determine what is the lowest price at which we feel we profitably can operate this property and produce the coal and sell it.

"Q. Now, in selling the coal to the TVA with reference to these various term contracts that you have had,
4650 obtained, have you ever entered a bid or secured a contract at a price which was suggested to you in any manner by the United Mine Workers?

"A. Oh, no, sir, no.

"Q. Has this ever been a matter in which your company has conferred with the United Mine Workers?

"A. Oh, no. No.

"Q. Have you gone into this question of price before submitting bids with other companies?

"A. No, sir.

"Q. And have you submitted bids to the TVA on these

term contracts with the intention of depressing the price of the TVA market?

"A. Repeat that question. I want to be sure I understand you. That confuses me. Why in the world, if I understood you, would anybody in the market they are hoping to operate in and do operate in want to depress the market. Did I understand the question?

"Q. Yes, sir, I asked you.

"A. Why, of course not. Preposterous.

"Q. And have you submitted any of these bids, Mr. Jewell, with the intention of driving out of business operators in East Tennessee?

"A. No, sir, no, sir, of course not. That is just as preposterous as the other thought. It couldn't have any
4651 bearing on any operator in East Tennessee as far as we would be conscious of. If so, it would be remote. It couldn't be a purpose."

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"Q. Now, Mr. Jewell, I will ask you if you had occasion in the 1950s, recent parts of the 1950s, to sell coal to Tampa Electric Company on behalf of Peabody Coal Company?

"A. Yes, sir.

"Q. Did you ultimately enter into a contract with Tampa Electric Company?

"A. Yes, sir, we did.

"Q. When was it that that contract was entered into?

"A. Well, I will have to refresh my memory on that. It was done by steps and stages.

"I think we reached an agreement on it in the latter part of '58, and I think we reduced it to written contract — yes, we did — in the early part of '59, February, I'd say, of '59.

"Q. Now, what have been your efforts with the Tampa Electric Company to sell coal to that company doing business in —

"A. They have not been very active. Frankly, we
4652 went to sleep on the job there a little bit and another coal company stepped in there and scooped us, and

stepped in and got a contract. We knew them, and we called on them but we hadn't realized Florida was too good a prospect. We went down occasionally and called on the utilities. We knew Tampa Electric, but we had not gotten them into any serious negotiations with us, and another company did, the Potter Towing Company secured a contract.

"Q. Excuse me. Was that the company that was owned by Nashville Coal Company?

"A. It was.

"Q. It was the Nashville Coal Company then, owned by Judson Potter?

"A. Justin Potter.

"Q. And what was the name of the transportation company that entered into the contract?

"A. As I recall, Potter Towing Company.

"Q. What did you do after you found that that contract had been entered into?

"A. We congratulated Mr. Potter and continued to call on Mr. MacInnes and tell him the next time he wanted to buy coal, we hoped we would be more ready than we were this time to seriously negotiate with him.

"We did not at that early stage have water-carrying facilities, and the Potter Towing Company did, and
4653 they beat us to the draw, but we kept in touch, because these utilities grow and build additional units and plants.

"Outside of that, I can't say we did anything except keep in contact and hope for opportunity to do business at a later date.

"Q. You spoke of Mr. MacInnes. Who is he?

"A. He is president of the Tampa Electric Company. Excuse me. I thought that had been brought out.

"Q. Did you later have further discussions and negotiations with the Tampa Electric Company, and, if so, how did they come about and when?

"A. Well, you said did I later. That last question you asked me if in the early '50s or mid-'50s.

"Q. That's right.

"A. I told you what we had done back for a period of time. I am not sure of all of these dates. I think 1957, we heard and it was generally heard by the gossip route and maybe in the papers that the company that had taken over the original Potter Towing Company contract with Tampa Electric had given notice to Tampa that it was not going to perform on the contract.

"Q. Was that West Kentucky Coal Company?

"A. It was West Kentucky, which we understood had purchased Nashville Coal Company, and its subsidiary, the Potter Towing Company.

4654 "Of course, that re-aroused our interest, and we got active again in our contacts with Tampa Electric Company. We went to see Mr. MacInnes, and tried again to sell him coal, and continued to try.

"Q. When you say you went to Tampa Electric and undertook to negotiate with Mr. MacInnes?

"A. I will have to qualify, I think it was in the early fall of 1957. I am almost positive that is when that was.

"Q. Now, what resulted after these discussions that you had with Mr. MacInnes at that time?

"A. Well, after many contacts, many discussions, it resulted in what we called a sort of a test order or something like — we shipped a total of 140,000 tons, I believe on it, which we secured from the Tampa Electric Company.

"We were not ready to negotiate seriously on a contract, and Tampa Electric wasn't either, but we wanted them to test our coal, and they were willing to test it, and we wanted to test out our experience of river shipments and transferring the shipments and shipping them across the Gulf before we committed ourselves to a substantial long-term contract, so that order was secured for that purpose and granted for that purpose.

"Q. Mr. Jewell, did you go to the Tampa Electric Com-

pany and negotiate with those people at the sug-
4655 gestion of the United Mine Workers?

"A. No, sir.

"Q. Did you go there to negotiate with Tampa Electric Company at the suggestion of anyone with West Kentucky Coal Company?

"A. No, sir, not with the suggestion of them and not with the knowledge of any one of them so far as we have any way of knowing.

"Q. Now, when was this 140,000 tons shipped to Tampa?

"A. That was — took us about a year to get that order, so it must have been — started in late '58 and extended over into '59, probably into the spring of '59.

"It was a make-shift arrangement we had, and we had to move pretty slowly. We weren't really equipped to handle it. We wanted to get some coal in their hands.

"Q. And how did you get it to Tampa?

"A. We had at that time established a barge company which is a subsidiary of Peabody Coal Company named the Mid-American Transportation Company, which is a barge line company. We shipped it down the river by that method.

"We transferred the coal from barges to Gulf transit equipment at the Burnside Transfer facility owned and operated by Olin Mathieson Corporation at Burnside, Louisiana.

"It was shipped from that point in open vessels
4656 without loading or unloading facilities to Tampa by an arrangement we made with the Marine Transit Company of Tampa, Florida, who were engaged in transporting products across the Gulf, in one way or the other, and it was unloaded at the Tampa dock with a crane and clamshell that we sent down from Western Kentucky, down this hundred some-odd thousand tons of coal, because we were unable to get arrangements for the use of the unloading facility that was on the dock, which was owned, incidentally, by West Kentucky Coal Company.

"We had attempted to get the use of it through some lease

arrangement, and we were unable to secure that equipment from them.

"Q. Did you also—

"A. We had the order, we took the gamble. We thought we could surely get that equipment. They are a rather friendly company, and when we got it, we couldn't get the equipment, and we did something that was very unprofitable. We had to ship a crane down there, and unload it to ship our coal.

"Q. In other words, West Kentucky would not deal with you with reference to this equipment?

"A. They wouldn't make a deal that we could go for. I don't recall the negotiations, wholly unsuccessful. They may have at some time said they would agree to so-and-so, but nothing we could ever consider at all.

"Q. Did you ship any of the West Kentucky Coal
4657 Company coal on this contract to Tampa Electric Company?

"A. No, never have. Did not and never have.

"Q. Now, during the period that you were shipping the tonnage on this test order to Tampa Electric Company, you were also negotiating with Tampa Electric Company for a term contract?

"A. Oh, yes. That was the purpose of shipping a test order, to try to get it going and after we got some we got into more serious negotiations on that and continued them until we began to get results on a contract, and finally did get results.

"Q. When did you reach an understanding with Tampa Electric as to the term contract?

"A. Well, I would say late in 195—well, early in 1959.

"Q. Now, that was—

"A. We made a contract, signed, as I remember, in February of 1959.

"Q. What does that contract call for?

"A. It called for a schedule of tonnage. Very small the first year. Maybe 150,000 tons, I don't recall, maybe 200,-

000. And then the next year when another unit would be complete it steps up considerably, too, I believe, 600,000 tons. And we get in the third year the tonnage was supposed to be 800,000 tons, but it seems that they got
4658 a little accumulation of coal and we might not get to ship that much. But that is the range and it increases. I can't remember the exact steps. It goes up, after the fifth, sixth or seventh year somewhere around a million or 200,000 tons and extends for a period of 20 years.

"Q. Do you know whether this quantity of tonnage is all of the coal which Tampa Electric will use during that period of time?

"A. No, it isn't all of the tonnage. They are using another coal now that they received by rail. I guess they still are. They were the last time I was there.

Q. Have they been using another coal during all this period that you have been selling coal?

"A. Yes, they have.

"Q. You say that is rail coal?

"A. Yes.

"Q. Do you know where it comes from?

"A. Why hearsay only. I have been told it comes from East Kentucky and East Tennessee.

"Q. How are you shipping this coal on this term contract to Tampa?

"A. We are shipping this coal with water shipping facilities that are owned jointly by our company, Peabody Coal Company, and Tampa Electric Company, which arrangements were worked out in the time—during the time
4659 immediately following the execution of the contract.

"The contract was executed by a long time before we could ship because we had to get the water facilities. The contract was executed in February, 1959, but we did not get started shipping on it until December of 1959 because jointly the Tampa Electric Company and the Peabody had the necessity of setting up water shipping facilities. One a barge line, which is called the Mid-South Towing Com-

pany, and a Gulf steamer, which is a converted T-2 tanke called the 'Martha Mack', which is a 15,000-ton ship.

"Q. Are both of these companies, that is, the barge com pany and the Gulf shipping company, jointly owned b Peabody and Tampa Electric Company?

"A. That is right. There is a transfer involved. You want the detailed facts?

"Q. Where do you barge the coal to, what point?

"A. We barge it to, recently, the last few months, to a point just south of New Orleans. Previously, for the first four or five months, maybe six, we transferred upstream above New Orleans.

"We were unable, for a long time, to make arrangements for facilities. Tried to but didn't. We had to equip the ship with a clamshell with which it can reach over into the barge and take the coal out of the barge and dump it into its own hold, and at the distination then it reached in the
4660 hold and take the coal out and unload it. That was are original method.

"We later acquired or leased, made a lease arrangement with West Kentucky Coal Company for a transfer facility that company owns at Myrtle Grove, Louisiana, about 45 miles south of New Orleans. We now make the transfer from barge there at that point using that facility.

"Q. Had you negotiated the use of the facilities of West Kentucky Coal Company prior to the time you had reached an understanding with Tampa Electric?

"A. Oh, no, for, as I say, we had to transfer for months in mid-stream with our own equipment because we did not and had not reached an agreement on it.

"Q. Now, I will ask you, Mr. Jewell, if after you reached an understanding with Tampa Electric Company on this term contract, whether you worked out an agreement with West Kentucky Coal Company to buy from West Kentucky Coal Company an amount of coal equal to half of the coal you were selling to Tampa?

"A. Yes, we did.

"Q. Has any West Kentucky Coal Company coal been shipped on your term contract to Tampa Electric?

A. No, sir.

"Q. And what have you been doing with the coal you have been buying from West Kentucky Coal?

4661 "A. I know what we are doing with it now. I think it has been done with it right along, is we are shipping it on another contract which we have, which is a contract with the City of Memphis—light, gas and water division of the City of Memphis, Tennessee, to a municipal plant operated by that division.

"Q. The West Kentucky Coal Company coal is being shipped to Memphis?

"A. That is right.

"Q. Why did your company enter into this contract with the West Kentucky Coal Company?

"A. Well, there are many reasons for buying of coal. We produce and sell our own coal. We also, at times, for verious reasons, buy some additional coal.

"In this case this is a water borne contract or shipping coal by water. In other words, the coal in this contract we have the privilege of shipping not just from our own mines but we specifically have the privilege of shipping coal from any mine we desire so long as it meets the quality specifications of the contract.

"We did that purposely because we only have two river mines in Western Kentucky. The River Queen Mine and the Ken Mine. And we wanted a little broader base than that to be sure to be able to give service at all times.

"You can have a breakdown in a coal mine or a
4662 coal dock. Now it is very logical in a contract of this responsibility and this size to have as many sources available as possible. That is one good reason for doing it.

"We had a number of other, two or three, contracts near Cincinnati, New Albany, Indiana — many of them. When you have those contracts you are responsible. You want to be sure you can perform.

"It wasn't out of any unusual force. It was good to have another source of supply. I can tell you other reasons.

"We at that time were hoping to get, and trying to get, the good wishes and cooperation and help of West Kentucky Coal Company on a problem which was a little delicate. We knew they had the contract and they had some reason for not shipping on it and we had moved in on it.

"We were trying to get their blessings and co-operation to the extent we could make a deal with them for the use of that Myrtle Grove Dock. They needed business badly, just as perhaps we all do, but we knew that they needed business. We were in position to place this amount of tonnage with them, and it was in the interest of good relations between the companies for us to do it, and we discussed it and *beliving* it was helpful and I finally reached an agreement with them on the Myrtle Grove Dock. I can think of those reasons offhand, and I think they are
4663 sufficient to justify it if any justification is needed when you are in the coal business buying coal.

"Q. When was it that you worked out this agreement with West Kentucky?

"A. I tell you I don't know. It was some time after the contract was made. Just how long I just don't recall.

"Q. It would have been some time after February of 1959?

"A. Oh, Lord, it was after, yes. I am confident it was, yes. I started to say a good deal after it, but I am not sure at all, but I am just as sure it was after. We couldn't have started before because we didn't know we had the contract.

"Q. Now, Mr. Jewell, what was your purpose in selling and negotiating this contract with Tampa Electric Company? What were you trying to accomplish?

"A. Promote our business, a normal way to sell coal, broaden our market, sell more tonnage, do more business.

"Q. Were you trying to monopolize the coal business in Tampa or were you attempting to depress the price of coal in Tampa in any way?

"A. No, sir.

"Q. Were you doing this at the suggestion of any other company or the United Mine Workers of America?

"A. No, sir.

4664 "Q. Were you attempting to — was it your intention in entering into this contract in negotiating for it to run mines in East Tennessee out of business?

"A. No, sir.

"Q. Mr. Jewell, in selling your coal, and I take it that most of your coal is mined by the strip mining method as you have testified, do you sell your strip mined coal to various markets and, if so, what would they be?"

* * * * * * * * * *

"A. You mean geographical markets or use markets?

"Q. Use markets.

"A. Oh, yes, we have domestic coal, heating coal, which is lump, egg, stoker coal for heating, and then the usual screened steam coal.

"Q. What are the differences in these markets pricewise in general terms?

"A. Well, they are considerable. You get down to your lowestmost difficult grades of steam coal to sell, which we call carbon, which is one-quarter inch by 28 mesh, carry very low price now. Something like $2.80 a ton. You get up to your egg coal, domestic use, you are in the range of $5.25 or $5.50 a ton. It varies. Your stoker coal, for do-

4665 mestic use, would sell for $4.85 a ton. Your normal screenings, inch and a half by 20 mesh screening, would probably be selling in the range of $3.25 to $3.50, $3.75, depending on the quality of the coal.

"Q. In other words, there is a considerable difference in the price the strip mined coal would bring, is that an accurate statement?

"A. You mean different sizes of strip mined coal?

"Q. Yes.

"A. Strip mined coal or any other kind of coal. Choice of domestic sizes bring more money than steam size.

"Q. What sort of markets do you have? Where do you sell your coal? Percentagewise, what amount of your coal goes to the steam market as compared to these other markets?

"A. Ours, a large per cent goes to the steam market, 70-odd, probably 80 per cent of our coal goes to the steam market.

"Q. Now, is the steam market the lowest price coal?

"A. Yes, sir. It is also the biggest market. That is the reason we have to go that heavy in it. You couldn't market the quantity of coal we produce in the domestic market.

* * * * * * * * *

4689 T. REED SCOLLON,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Combs:

* * * * * * * * * *

4695 Q. Now, Mr. Scollon, we are speaking of an exhibit that is marked Chart 1, "United States Consumption of Energy Fuels and Water Power in Per Cent of BTU's, 1940-1964."

I wonder if you would explain the changes in each of these energy sources. Would you explain this chart? Can you see it from there?

A. Yes.

Q. Or you can use the one that you have.

A. I can see it from here.

Q. Would you please explain this chart then?

A. I would like to explain first that the purpose of this chart is to show the relative position of each fuel and water power for any given year.

The hundred per cent line for the year 1940 is equivalent to 23.9 quadrillion BTU's, whereas the hundred per cent

line for the year 1964 is equivalent to 51.7 quadrillion BTU's.

Mr. Rowntree: May I ask what was that 1940 figure again?

The Witness: 23.9 quadrillion BTU. So that the
4696 total energy consumption has more than doubled over this 24-year period. This chart shows a level 100 per cent. For example, in 1940, 47.2 per cent of the total energy consumption was by bituminous coal and lignite and then 5.2 per cent, the red area on the chart, was anthracite consumption, and 31.4 per cent represented crude oil consumption, 12.4 per cent was natural gas consumption, and 3.8 per cent was water power consumption in the year 1940.

Now, the trends, I think, are quite apparent from the chart. Bituminous coal and lignite consumption as appears of the total hit a peak during the war in about 1943, during World War II, and has declined rather regularly until recent years.

It has shown a leveling off in the early 1960's with a slight rise and that similarly continues to decrease its percentage of the total energy market.

Crude petroleum, on the other hand, has shown a gradual increase, as has natural gas. Both of these fuels, petroleum and natural gas, have just about displaced the portion of the market that bituminous coal, lignite, and anthracite had in 1940.

Water power is shown as a relative constant amount for the 24-year period. This means that although the generation of power by hydroelectric means has increased that its share of the total has remained constant. In other
4697 words, it has increased on a comparable level to the total energy increase.

If you combine natural gas and petroleum in 1940 you find that approximately 44 per cent of the market of the consumption was by these two fuels, whereas in 1964 natural gas and crude petroleum represented about 74 per cent of the total consumption.

The greatest gain was in the consumption of natural gas. I should like to call your attention to the fact that the petroleum and petroleum products represented on the chart as crude petroleum includes products that are not directly competitive with coal, roughly two-thirds of that amount represents gasoline, diesel fuel, kerosene and motive power fuels, as I recall.

I think that is all I have.

* * * * * * * * * *

4699 By Mr. Combs:

Q. Now, Mr. Scollon, what brought about these changes in this energy structure from 1940 to 1964 that you have testified about, what brought about these changes?

A. Well, economic and technical developments, primarily among the fuels. The development of the automobile and the airplane, for example, brought about a demand for gasoline. As this demand grew, other products resulted from the refining of crude petroleum, several of which are in competition in the non-motive fuel market, the diesel fuels, the kerosenes, jet fuels, gasolines and so forth not being competitive, but the fuel oils and residual fuel and some of the kerosenes and lighter oils became more and more competitive.

Furthermore, the development of cross-country pipelines made natural gas more competitive on a nationwide basis and even in the consumption of the fuels improved technology resulting from research and other developments resulted in better utilization.

4700 For example, in 1940 it required 1.34 pounds of coal to produce a kilowatt-hour of electricity, whereas in 1964 only 0.86 pounds of coal per kilowatt-hour were required to produce a kilowatt hour of electricity.

Q. Now, what are coal's principal markets?

A. Coal's principal markets are the electric utility market, coke producers, industrial market, retail market.

Q. What does this industrial market include?

A. The industrial market includes coal used for man-

ufacturing and mining industries, cement mills, steel and rolling mills, and generally large users of coal, but do not include, the category does not include coal used to produce coke nor does it include the electric utilities which has been kept as a separate category in the Bureau of Mines' statistics.

Q. Now, have you prepared a chart to show the trends in these principal markets during this same period of time?

A. Yes, I have.

Q. And would that be Chart No. 2?

A. Yes.

Q. Would that be reflected on table No. 2?

A. Yes. Here again this chart has been prepared to show the relative position on a percentage basis in
4701 any given year. Coincidentally, on Chart No. 2 the hundred per cent line for 1940 is equivalent to 433 million tons of bituminous coal and also in 1964 the hundred per cent line is equal to 431 million tons of coal. I repeat this is a coincidence, but I think it does stress the different proportion that each category serves in the different years.

In the industrial market, if you will refer to the table, 30.3 per cent of the total coal consumption was in this category in 1940 and it dropped to 23.1 per cent in 1964. This has been a rather gradual decrease. The blue area representing the coal produced to produce coke, the amount of coal consumed, the percentage of the total has increased slightly from 18.9 per cent in 1940 to 20.6 per cent in 1964.

The greatest growth of all is in the yellow area showing the per cent of coal used by electric utilities. This has increased from 11.4 per cent in 1940 to 51.7 per cent in 1964.

Retail deliveries, the tan area on the chart, represent 19.6 per cent of the total bituminous coal consumption in 1940 and dropped to 4.6 per cent in 1964.

The railroad category represented by red on the chart decreased from 19.8 per cent of the total in 1940 to practically nothing, the Bureau discontinued canvassing this

category after the market had dropped to less than
4702 half a million tons in 1961.

These last two markets together, that is, railroads and retail delivery categories, together represented 39.4 per cent of the total market in 1940 but in 1964 they represented only 4.6 per cent of the total.

The reason, of course, for the loss in the railroad market was the dieselization of the railroads, which began in the mid-1940's. The inroads of fuel oil and natural gas affected coal used in the retail market and in the electric utility market. Despite the fact that coal has grown, it would, of course, have grown still further had it not been for this competition.

In the coke area the efficiency in making steel has increased greatly and to some extent offset the increased demand for steel.

Until recently coal had no real competition in this market but the new process of introducing supplementary fuels into the tuyeres of the blast furnace permits the use of both natural gas or either natural gas or petroleum products, thus reducing to some extent the amount of coke required in the process and in the industrial market. Here again the competition against the energy fuels is very severe.

Mr. Rowntree: May I ask if Mr. Callis could sit over here where he could see these charts?

4703 The Court: Yes.

By Mr. Combs:

Q. Mr. Scollon, you have been talking about percentages. Let me ask you this question: In 1940 the railroads are shown on that chart in percentage. About how many tons of coal would that be?

A. Approximately 86 million tons.

Q. Now, I believe you testified that in 1964, the chart and the figures show that was less than half a million tons?

A. Yes.

Q. Now, what about this retail group, about how much coal in tons did they consume in 1940?

A. It was almost identical to the retail delivery or to the railroad, it would be about 82 million tons, I would say.

Q. What is the retail market now in tons in 1964?

A. It would be less than 20 million tons.

Q. In other words, the decrease in the retail would be from about 82 million tons to about 19 million tons or less than 20 million tons?

A. Right.

Q. The decrease in the railroad would be from 86 million tons down to less than half a million tons during this period of time, 1940 to 1964?

4704 A. Yes.

Q. How do you account for the decrease in the railroad consumption, did you go over that?

A. I mentioned that the dieselization of railroads removed coal as a locomotive fuel. The diesel locomotive proved to be more efficient and more economical than the coal-burning locomotives and they were gradually displaced from the mid-1940's until the early 1960's.

Q. In 1940 about how much did the coke producers use in tons?

A. I can get that exactly. In 1940 the coke producers consumed about 81 million tons of bituminous coal.

Q. I believe the peak year there on your chart on coke would be about 1951. And can you tell from there about how many tons they produced?

A. Yes, in 1951, 113 million tons of coal was used to produce coke.

Q. Then the consumption is relatively stable then for the rest of the year?

A. The consumption in actual tonnage has decreased slightly to the total of about 70—about 86 million, I do not have the '64 figure, the estimate I gave you a moment ago, I believe, is 83 million tons.

Q. Now, you mentioned the competition of the

4705 petroleum and petroleum products and the residual or resultant by-products becoming a competitor of coal. Has that increased in recent years, this competition?

A. Oh, yes, yes, it has.

Q. Do you have any way to know or to tell about what the increase is, comparatively speaking there?

A. I think that is best shown in Chart No. 1. We have covered the relative change in the competition or in the increasing competition from natural gas and from fuel oil.

Q. And it would be reflected in numbers on Table 1?

A. On Table 1 it is reflected there, yes.

Q. Thank you. Now, in connection with this you didn't mention the exports in your discussion. This is consumption. Have you prepared a table, a chart, showing figures with respect to the bituminous coal exports?

A. I have not prepared a chart, but I have a table, Table A.

Mr. Combs: And that, I believe, Your Honor, is in the back of the document that I handed, it's after Chart 9 where we have Table A and Table B and Table C and then we have an unnamed table on the price of coal, but I would like to make another exhibit out of A, B, and C.

The Court: Well, they have been clipped together with Exhibit No. 395 and since they are designated by A, B, and C, rather than by numbers and the tables themselves also are designated by numbers, can we just not consider them a part of Exhibit 395?

4706

Mr. Combs: Yes, if that is all right with counsel.

By Mr. Combs:

Q. All right. Will you refer to Table A then and tell the Court what this table shows and what it reflects?

A. Well, again I have used the period 1940 through 1964 and in the earliest year the United States' exports of bituminous coal amounted to just over 16 million tons. This increase to 69 million tons in 1947 because of primarily the post-war recovery in Europe and then decreased slightly

and rose again in 1951 to 57 million during the Korean situation, it dropped again and rose to an all-time peak during the Suez crisis in 1957 when export of bituminous coal amounted to 76 million tons.

Since that period or after that period exports had decreased to 35 million in 1961, which was a recent low, and since that time have been increasing.

I think it is significant that in the last two years shown and to date this year there is some stability shown in the export market, and these are non-emergency years. Each of the other peaks in the past has occurred during some emergency.

Q. I believe the 69 million that you mention in
4707 1947 was immediately after World War II and was used for reconstruction, is that correct?

A. That is correct.

Q. Now, Mr. Scollon, when coal loses ground in one of these particular markets, such as you have been talking about, the markets in the export trade and markets in the railroads and in the retail deliveries, what is the consequence of the loss of that market of coal, what is the consequence of that?

A. It means that that coal which has been displaced, say by residual fuel oil or natural gas that goes on the market that can find another consumer and it just places that much more coal in competition and as a rule the overall capacity of mines is greater than the production and there is an excess of coal on the market on the average so that as coal loses a market it tries to seek another market in competition with either the competing fuels or with another coal.

Q. Now, does that competition after new business, is that more strong as these markets are displaced, is the competition stronger or are they looking for business harder than they would normally?

A. It becomes more severe because there is more coal available for the same market.

Testimony of T. Reed Scollon—Direct

Q. Now, have you prepared a table showing
4708 changes in the United States coal industries from 1940 to 1964?

A. Yes, I have shown this in Table B.

Q. Would you explain that table, please?

A. This table—I will just hit the highlights—under production in the year 1940, bituminous coal production was 461 million tons, I am just rounding here, if that is permissible.

Mr. Combs: Is that all right, Counsel? Is it all right for him to round them off?

Mr. Rowntree: Yes.

By Mr. Combs:

Q. All right. Go right ahead.

A. And reached an all-time high of 631 million tons in 1947.

Production in 1964 was 487 million tons.

During this 24-year period the average value per ton of coal was $1.91 in 1940, it reached a peak of $5.08 in 1957, and in 1964 was $4.45.

I think it is significant here that the average value of coal has decreased by 63 cents per ton since 1957. In the number of mines that I have on a later chart, and we might skip that just for the time being.

Q. All right.

A. Average number of men working daily is 439,000 in 1940, reaching a peak of 462,000 in 1942, and since
4709 1948 has been generally downward until 1964, when 129,000 men were working daily in the bituminous coal mines in the United States.

In 1940 the average tons per man per day, 5.19, and with few exceptions has increased in this 24-year period to 16.84 tons per man-day in 1964.

In 1940, 202 days were worked on the average. The highest number of days worked in any year was in 1944 when 278 days were worked. This has varied very erratic-

ally over the years, and in 1964, 225 days on the average were worked.

Under the percentage of underground production, I should like to clarify the sub-heading "Cut by Machine," this means actually undercut by men. The difference between the hundred per cent and the figures shown in the earlier year accounts for coal that is undercut by hand or shot from the solid, but in later years you will notice a substantial decrease, and this decrease primarily results from the introduction of continuous mining.

Q. Now, let's see if I understand you. When you look at the column, the first column in 1940 under "Cut by Machine" is 88.4 per cent, "Mechanically Loaded" is 35.4 per cent.

Now, this mechanically loaded coal also includes the undercut coal?

4710 A. It does. There is no direct relationship.

Q. No direct relationship at all. And when you drop down to 1964 in the same thing would be true, when you say that 87.4 per cent was mechanically loaded, it could also include the undercut?

A. Yes.

Q. All right.

A. So this substantial decrease shown here, the decrease from 88.4 in 1940 to 57.4 per cent in 1964 represents elimination of undercutting by the more modern method of mining referred to as continuous mining.

Q. Right.

A. The total mechanically loaded coal has increased from 35.4 per cent in 1940 to 87.4 per cent in 1964.

Q. Now, may I ask a question, Mr. Scollon? In that column does this show a continuous increase over 1940 in mechanically loaded coal in each of the years?

A. It did until about 1958, '59, let's see, until 1961 was the highest point, and there has been a slight decrease since that time.

Q. But in 1964 it went back up, that is the only variation?

A. Yes, this has varied with the change in the per cent mined by stripping, it's primarily been a result of the increasing amount of coal mined by stripping as shown
4711 in the last column of that table.

Q. All right. Go ahead.

A. Mechanically cleaned coal has increased from 22.2 per cent in 1940 to 63.7 per cent in 1964 and coal mined by stripping has increased from 9.2 per cent in 1940 to 31.2 per cent in 1964.

The Court: What is meant by "mechanically cleaned coal"?

The Witness: Coal that is cleaned in a process using water or sometimes air as a medium to separate the bone and slate from the coal itself.

The Court: How is it done otherwise than mechanically?

The Witness: It can be hand picked.

The Court: Oh.

The Witness: One of the older methods was to hand pick it.

By Mr. Combs:

Q. When you talk about washing coal, would that be mechanically cleaned?

A. It's the same thing, yes.

Q. In other words, it would be hydraulic or some air or something?

A. Yes.

Q. Now, Mr. Scollon, have you prepared a table
4712 showing these changes in Tennessee that you have been talking about nationally? Does that show on Table C?

A. Yes.

Q. Would you explain that table, please, and go over that?

A. All right. On Table C, the production of bituminous coal in the State of Tennessee was 6 million tons in 1940 and was approximately 6 million tons in 1964. In the interim it had reached its peak of 8.8 million tons in 1956.

The average value per ton increased from $2.00 in 1940 to a peak of $5.74 in 1948. The increase in value, the peak for the United States was in 1957, but Tennessee's average value then decreased to $3.79 in 1964.

I again will skip the number of mines column and cover them on a later chart, if that is satisfactory.

Q. All right.

A. In Tennessee there were 8,566 men working in bituminous coal mines in Tennessee in 1940, this decreased to slightly over 3,000 men in 1964.

Q. Now, what about the year 1957, is that close to the 1940 number?

A. Yes, in 1941 and '42, the number of men continued to increase but then fell off rather sporadically until it reached a low of 4,500 men in 1954 and then increased to 8,200 men in 1957, which was the highest year since 1942.

4713 Q. All right.

A. On average tons per man per day in Tennessee in 1940 was 3.38 tons and in 1964 it was 10.15 tons.

Q. What was it in 1950?

A. In 1950 it was 4.67 tons.

Q. All right. What about the average number of days worked?

A. In 1940, 208 days were worked on the average at mines in Tennessee, and in 1964, 195 days were worked.

Q. What about 1950?

A. In 1950, 168 days were worked. The peak year was 1944 when 264 days were worked.

Under the percentage of underground production, 79.8 per cent was undercut by machine in 1940 and 81.1 per cent was undercut in 1964.

Q. What about 1950?

A. In 1950, 89.5 per cent was undercut by machine.

Q. All right.

A. Mechanically loaded coal was 11.9 per cent of the total underground production that was mechanically loaded

in 1940 and in 1950, 42.5 per cent was mechanically loade
and in 1964, 65.7 per cent was mechanically loaded.

Mechanically cleaned coal represented only 5.2 per ce
in 1940 and has varied to a maximum of 11.3 per cent i
1956, but has decreased since that time and currentl
4714 the amount is so small that we cannot reveal it fo
confidentiality reasons.

Q. All right.

A. Coal mined by stripping, the first tonnage reported o
in an amount to report on a table was in 1944 when 1½ pe
cent of the total production of the bituminous coal in Ten
nessee was mined by stripping. In 1950 this had reache
11.5 per cent and in 1964, 34.6 per cent of the total.

Q. All right. Mr. Scollon, are these conditions or simila
conditions reflected in each coal-producing area or coal
producing state?

A. The figures I have just quoted from Tables B and
C represent the situation in the United States and Tennes-
see respectfully, they will vary among the different states.

Q. Now, do you have a chart which shows the trend of
production of coal in Tennessee compared with the trend of
production in the United States?

A. Yes, Chart No. 3.

Q. And that chart would be reflected in your Table
No. 3?

A. It is reflected in Table No. 3. This chart shows for
the United States for the year 1950, the production in the
year 1950 as being 100 and then this index number is shown
on either side of the year 1950 and for the United States
this 100 represents 516 million tons production in that
year.

4715 Now, similarly, the 1950 production of Tennessee
is represented by 100 per cent, but in this case the
100 per cent production for Tennessee is 5 million tons an-
nual production for that year.

I would like to apologize to the Court for an error we
have just located on the chart. If you will refer to the

Table 3 under the United States column for the year 1945 and 1946, you will see index numbers of 111.9 and 103.4, respectively. In other words, that is a graphing error, that point did not go below the hundred per cent line in 1946, so that what this chart means is that in only two years in the decade 1940 to 1950 was the production less than it was in 1950, whereas in the United States again, except for the year 1951, production does not reach the 1950 level of production in any subsequent year to 1964.

On the other hand, in Tennessee in only one year prior to 1950, in the 1940 to '50 decade, was the production lower than it was in 1950 and subsequent to 1950 production in Tennessee has been at a higher level than 1950, contrary to the United States' situation.

Q. What percentage would the chart show that the production was in Tennessee in 1950, taking it as a base, what percentage would they be producing in 1964?

A. In 1964, 118 per cent of the 1950 production.

Q. Mr. Scollon, do you have charts to show the
4716 production of bituminous coal and other information by the size of coal mines prepared?

A. Yes, Table No. 4 covers the United States.

Q. And is it Chart No. 4, too?

A. And Chart No. 4.

Q. All right. You have a Table No. 4 and Chart No. 4 reflects in the percentages what the charts show. Would you explain to the chart and the table, what it shows?

A. Yes. Again we have shown, this is a percentage chart to reflect the relative position of mines in each class for any given year. I should like first to make some qualifying statement that no mines that produce less than a thousand tons a year are included. Furthermore, it is possible under this classification system for a mine to be in one class one year and another class another year.

Q. Now, could that be up or down?

A. It could be up or down, generally, except for the top and bottom classes.

Q. Yes. All right. Go right ahead.

A. These classes have been distinguished as Classes 1 through 6. Class 1 —

Q. (Interposing) May I ask you one question without interfering with you?

A. Certainly.

Q. How long have you been classifying these mines
4717 in this way or the Bureau, how long has that been going on, some time?

A. For many years, back beyond 1940, I don't have the figure.

Q. Well, the point I am making it has nothing to do with this case, that classification has nothing to do with this particular case?

A. Oh, no, this is an established classification for several decades. The Bureau of Mines has carried the classification for several decades, yes.

Q. All right, sir.

A. Class 1 are the mines represented by the red area on the chart, are mines that in a given year produce more than a half million tons. In 1940 they represented 45.7 per cent of the total production. This decreased to a low of 29.3 per cent in 1949 and has shown a rather gradual increase to the present time when the percentage of the total is 54.9 per cent.

Now, in Class 2, the class shown by the blue area on the chart, the percentage was rather steady between 1940 and 1950. In 1940 the percentage was 26.6, in 1950 it was 27.1, but then it fell off to the 1964 percentage of 15.2.

In Class 3 mines, the class represented by tan on the chart, these are mines that produced between 100,000 and
200,000 tons per year. In 1940 this class produced
4718 13.4 per cent of the total. This amount remained steady until about 1949 when it increased to 16.1 per cent and since then has decreased to the point that it now in 1964 represents 7.7 per cent of the total.

Class No. 4 mines represented by the yellow area on the

chart produced 50,000 to 100,000 tons per year and represented 5.8 per cent of the total in 1940, reached a peak of 10.9 per cent in 1949 and decreased to 7.8 per cent in 1964.

In the Class 5 mines represented by green on the chart, are mines that produced 10,000 to 50,000 tons per year, the percentage of the production of these mines was 5.8 per cent in 1940, increasing to 11.4 in 1949, and has been roughly constant since that time and in 1964 it is 10.8 per cent of the total.

Class 6 mines, that is, mines with less than 10,000 tons and more than 1,000 tons, represented 2.7 per cent of the total for production in 1940, increased to about 5 per cent in 1949, and has decreased gradually to 3.6 per cent in 1964.

Q. Now, have you prepared a chart to show the production by the size of mines in the State of Tennessee besides this?

A. Yes, Chart No. 5 and Table No. 5.

Q. Would you explain what that chart and the
4719 table are?

A. The legend is the same for the Tennessee mines as for the United States mines. I should like to call attention to the year 1954 where between these classifications we show some dash lines. During this year, the Bureau of Mines and the Bureau of Census made a combined study and under the confidentiality rules of the Bureau of the Census they were not permitted to publish the breakdown by size of mines for this year.

I don't know that it alters or makes much difference here, but I did want to call that to the Court's attention, that these dash lines are very questionable, the exact level in 1954.

Q. In other words, you just omitted from this chart and from the table the year 1954 because of the Bureau of Census confidential rule?

A. Yes.

Q. All right.

A. If you could envision it as being blank between the years '53 and '55.

Q. Right.

A. It would probably be more accurate than it is now.

Q. All right, sir. Go right ahead.

A. In the largest class mines, that is indicated by red, the mines over 500,000 tons per year, only occasion-
4720 ally has there been a mine or mines producing in this area in the years 1942, '43, '56, '62, '63, and '64 is there some indication of production.

In 1964, 9.2 per cent of the total production came from this class of mine, whereas in 1940 there was no production from this class.

In Class No. 2, the blue class on the chart, mines producing between 200,000 and 500,000 tons, mines in this class produced 48.8 per cent of the production and in 1964 produced only 16.2 per cent of the production.

Q. Now, Mr. Scollon, if you don't mind, when you are going through these columns would you reflect 1940, as you have been doing, and 1950 and 1964? I think that would be a little helpful.

A. I will revert back to Class 1 mines then. In 1950 there was no production from this class.

In Class 2 mines in 1950 there was 19.6 per cent of the production was in this class.

Now, in Class No. 3 the production in this class was 24.7 per cent in 1940, 38.1 per cent in 1950, and 15.4 per cent in 1964.

In Class 4 mines, 14.7 per cent of the production in 1940, increasing to 23.5 per cent in 1950, and then decreasing to 18.2 per cent in 1964.

Class 5 mines increased from 8.1 per cent in 1940
4721 to 13.7 per cent in 1950 and to 31.4 per cent of the total production in 1964.

In the Class 6 mines, the smallest mines we show, the percentage of the total production was 3.7 per cent in 1940, 5.1 per cent in 1950, and 9.6 per cent in 1964.

I think it is significant to note that the Class 2 and Class 3 mines combined in 1940 represented 73-½ per cent of the production and in 1950 represented 57.7 per cent and in 1964 represented 31.6 per cent. This decrease was made up in the increase of mines in all of the other classes.

Q. I see. Now, do you have a chart to show the trend in the number of mines in each of these groups since 1940?

A. Yes. Chart No. 6 and Table No. 6. The number of mines in Classes 1, 2, 3, and 4 are relatively stable over this entire period and relatively low. The Class 5 mines indicated by the green line amounted to 1,157 in 1940, these are in the United States, 2,367 in 1950 and 2,299 in 1964.

Class 6 mines in 1940 were 3,728 in this class, in 1950 there were 5,252 mines, which was the peak year, and in 1964 there were 4,050 mines in this class.

In the total column, I would call attention to the fact that in recent years, or since 19—well, let's say in the last six or seven years there are more mines in operation than were in operation at any time during World War

4722 II.

Q. Would you explain what that broken line means there, Mr. Scollon, on that chart?

A. The broken line?

Q. Yes.

A. That merely designates Class 6, it is a dotted line on that chart.

Q. I see.

A. To distinguish it from the solid line above.

Q. I see. Now, have you prepared a chart to show the number of mines and the various sizes in operation in the State of Tennessee?

A. Yes, Chart No. 7 and Table No. 7 reflect this.

Q. Would you explain the chart and the table, please?

A. Again in Tennessee the number of mines in Classes 1, 2, 3, and 4 are relatively low during this entire period. The Class 5 mines represented by the green lines, there were 21 in 1940, 30 mines in 1950, and 82 mines in 1964. The

Class 6 mines, the smallest mines in our grouping, there were 71 mines in 1940, 68 in 1950, and 144 mines in 1964.

You will note a significant increase in 1951 to 1952 to '53 and then a gradual dropoff.

Q. Was that in contrast to the United States?

A. That was in contrast to the United States, which showed a gradual decrease after the year 1950 for the
4723 Class 6 mines.

Q. What has the industry done, Mr. Scollon, to maintain its position in its competition with oil and natural gas?

A. Well, it has done many things, but one of the most significant has been the increase in the mechanization of operations.

Mr. Rowntree: May I ask the witness one question on this chart right here?

The Court: Yes.

Mr. Rowntree: What is this category above the Class 6?

The Witness: As distinguished from the percentage charts, the line indicates the number of mines and the area between has no significance, the dash line for a given year shows the number of mines in Class 6 and if you add Class 1, 2, 3, 4, 5, and 6, it will equal the total line at the top, but the area between has no significance as it does on the percentage chart.

Mr. Rowntree: I believe you have Class 5 above the green and also Class 6 above the green and both below the dotted line?

The Witness: No, I would try to explain again. Class 5 is represented by the line and not the area, and Class 6 by the dotted line and not the area between.

4724 Mr. Rowntree: I see.

The Witness: I think you are confused, Mr. Rowntree, naturally because of the percentages, I have been showing where the area between the line was significant, here it is not.

By Mr. Combs:

Q. I asked you a question about what the industry has done in its position in competition with oil and natural gas?

A. The industry has, to the extent possible, mechanized its mines to lower its costs and to otherwise meet the competing situation.

Q. Do you have a table and a chart to reflect the mechanization of the production of bituminous coal by method of mining?

A. Yes.

Q. Is that Chart 8?

A. Chart No. 8 and Table No. 8.

Q. Would you explain that chart, please?

A. Again we are back to a percentage chart, which shows in any given year the proportion of the total coal production by each of the methods of mining.

Before going into the details, I might explain briefly and simply the different methods of mining. At the top in the red area, you will notice auger mining. This has
4725 been an innovation in the United States in the last 15 years or so, and in the United States it represents a method of mining whereby coal is obtained from the high wall of a strip mine. In other words, the overburden becomes too great to make it economical to strip, so augers are used to recover from several hundred feet to approximately 800 feet of the coal under that overburden.

Strip mining represented by the yellow area generally means surface mining or open cast mining, whereby the overburden is removed above the coal and the coal is then loaded out.

Underground production, hand loaded, this is our oldest method of mining, which is just what it says, the coal is shoveled by hand into cars.

Under the underground production, mechanically loaded, this represents all coal regardless of how it is loosened at the face, it's loaded by mechanical means.

Now you will notice in the lower right-hand corner we have shown a line which indicates continuous mining. This is a relatively new method of mining first reported in 1948 but in continuous mining the normal procedures in mining coal, the usual procedures in mechanically mining coal, many are eliminated under the conventional mechanical loading of coal, the face is undercut by a machine, the coal is drilled, and it's blasted and then it is loaded.

4726 In the continuous mining the coal is not undercut, it is not drilled, it is not shot down but it is mined, extracted by bits, either on a rotating chain or on a gear, and thus its name, the name continuous, has developed. It just moves along and mines and loads coal as it goes.

Unfortunately, Table 8 does not show the percentage of coal by continuous mining. I have those percentages, if you would suggest I could read them into the record.

Q. I think perhaps it would be of benefit to read that, if you have it there convenient.

A. If you will refer to Table 8 under the column "Underground Production—Mechanically Loaded," you will note for the year 1949 that 51 per cent is mechanically loaded. Of that 51 per cent one per cent is continuous mining and from there on down I shall read the percentage of continuous mining which is included in the first column.

Q. Let's pause just one second. Did this continuous mining process, did that come into being in 1949, is that the significance?

A. Actually the first record the Bureau of Mines had was in 1948, but it was less than one per cent.

Q. All right.

A. And in 1949 it was one per cent; in 1950, one per cent; in 1951, one per cent; in 1952, 2 per cent; in 1953, 3 per cent; in 1954, 4 per cent; in 1955, 6 per cent; in 1956, 8 per

4727 cent; in 1957, 11 per cent; in 1958, 14 per cent; in 1959, 16 per cent; in 1960, 19 per cent; in 1961, 21 per cent; in 1962, 21 per cent; in 1963, 23 per cent; and in 1964, 26 per cent.

That would mean then for 1964 that 58 per cent of the total production was loaded mechanically but 26 per cent was by continuous mining and the balance, or 32 per cent was mechanically loaded by methods other than continuous mining.

Q. All right. Now, Mr. Scollon, would you refer to your Table 8 and go through the columns on 1940, 1950, and 1964 on the methods of mining?

A. In the United States in 1940 the underground production mechanically loaded, was 32 per cent, and it reached a peak in 1955 of 63 per cent and in 1964 was 58 per cent.

Strip mining was 9 per cent in 1940 and reached its peak of 31 per cent in 1962, which is the same percentage of the total production for 1964.

Auger mining was first reported in an amount sufficient to be reported in 1953 when it reached one per cent of the United States production and in 1964 it represented 3 per cent of the total production.

Underground production, hand loaded, represented 59 percentage of the total production in 1940, it was 23
4728 per cent of the total in 1950, and in 1964 had reduced to 8 per cent of the total.

Q. All right. Now, do you have a chart showing comparable developments of the State of Tennessee in a table?

A. Yes, Chart No. 9 and Table No. 9.

Q. All right. Would you explain those charts, please?

A. Before I proceed, would it be advisable to add the continuous mining figures on this chart? There are only a few years here.

Q. All right. Could we add the percentages?

A. Again adjacent to the column of underground production, mechanically loaded, opposite the year 1959 by continuous mining, one per cent; 1960, 2 per cent; 1961, 2 per cent; 1962, 5 per cent; 1963, 5 per cent; and 1964, 6 per cent.

Q. Now, that is coal mined by continuous mining process in the State of Tennessee?

A. That is correct. In 1940 in Tennessee, 12 per cent of the total production was loaded mechanically and in 1964, 40 per cent was loaded mechanically.

In 1940 less than one-tenth of one per cent was produced by the strip method, in 1940, that is, and in 1964, 35 per cent was produced by stripping.

Auger mining was first reported in 1953 when it represented one per cent of the total production and in
4729 1964 auger mining accounted for 4 per cent of total production.

In Tennessee underground production, hand loaded, represented 88 per cent of the total in 1940, 50 per cent in 1950, and 21 per cent in 1964.

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Q. Could you tell us what developments have occurred in other industries to maintain coal's competitive position, that is, consumers of coal?

A. One of the major developments has been by the railroad industry in the adoption of unitrain concept.

Q. Would you explain that concept, what is that?

A. Under this concept, trainloads of coal are loaded rapidly, moved rapidly to market, and the empty cars are returned rapidly to the mines and thus making the availability, increasing the availability of the capital equipment.

4730 These trainloads are made up of 7,000 to 10,000 tons each, they move as an express train and reduce freight rates by as much—freight rates have been reduced by as much as a dollar and a half per ton on some of these unitrain movements.

Q. What about the shipment of coal by truck and by water?

A. The shipping of coal by truck and water have increased, particularly on those short movements where it is cheaper to transport by truck and water. This has been taken advantage of and in the mine mouth power genera-

tion of coal the transportation of coal is held by a minimum and the power from the coal is transmitted by extra high voltage transmission.

Q. Is that what they are talking about when they are talking about "coal by wire"?

A. Yes.

Q. Can you tell us why that the efficiency of coal consumption in electric utility plants has increased so rapidly during the past several decades, how come that increase?

A. It has increased basically because of technological changes resulting from research because of the increased size of the plants, the increased efficiency of using of fuels.

Q. Has the Bureau of Mines made any estimate as
4731 to the future market for coal?

A. Yes.

Q. Would you comment on that, please?

A. The Bureau of Mines has estimated that the market for coal in 1980, if present trends and competitive relationships remain the same, will amount to a total demand of about 50 per cent over today's demand.

Q. What would that be reflected in tonnage?

A. The present level of approximately 500 million would reflect to approximately 750 million tons.

Q. Now, in which of these markets will this demand increase, in your estimation?

A. In electric power utilities. The Federal Power Commission, for example, has estimated that over 500 million tons of coal will be consumed in electric utilities in 1980 and this is just about equal to the total production today.

Q. You think there will be much of a change in the demand in other markets, or will that vary up and down?

A. In the other markets, there will be fluctuations, I think increases in one market will more or less offset decreases in another.

Q. Well, now, do your projections indicate coal will fill most of the increased demand for electric power generation

that you are talking about, you think coal will fill most of that?

4732 A. Our projections show that coal will probably increase its share of the market in the electric utility plant, however, the other fuels' use will increase in absolute terms but not in percentage terms.

Q. Well, does this mean that the competing fossil fuels will decrease in the percentage share of the market?

A. As a rule, yes, but not in absolute terms, as I just mentioned.

Q. What about nuclear energy?

A. Nuclear energy now represents about one-tenth of one per cent of the total energy consumption. The Atomic Energy Commission estimates that 19 per cent of the generating capacity will be nuclear power in 1980, I beg your pardon, 19 per cent of the power generated will be from nuclear energy in 1980 and 13 per cent of the installed capacity for electric generation will be by nuclear power.

Q. Now, have you projected the coal demand for a period beyond 1980, or is that practical?

A. No, we have not. The Bureau of Mines has not. Others have made projections and generally they show rather large increase in demand for total energy beyond these years. There is quite some disagreement as to the amount of the energy that will be furnished by the fossil fuels and nuclear energy. It is just too difficult beyond 1980 to make an estimate because of potential radical technological

4733 changes and economic changes, too.

Q. Mr. Scollon, I show you Exhibit No. 357 that has been introduced in this record here. Would you turn to page 105?

A. 105?

Q. Yes, sir, please, Table 95. Will you describe what that table represents?

A. This table represents the coal reserves in the United States as of January 1st, 1960, and it is based on the estimates of the United States Geological Survey. It shows

total recoverable reserves as of January 1st, 1960, assuming a 50 per cent recovery, of 830 trillion tons of coal.

Q. Now, at the present rate of consumption that we have been talking about, taking 500 million tons as a base, how many years of reserves would that reflect then?

A. About 1,700 years.

Q. Now, Mr. Scollon, what were the original reserves of coal?

A. The estimated original reserves were 1.7, just a minute, please, excuse me. The estimated original reserves are just about double the figure I mentioned of 830 trillion tons, primarily because the 50 per cent recovery that is adopted by the Geological Survey.

Q. In other words, since the beginning of the coal
4734 industry they have mined about 50 per cent?

A. No, no.

Q. How would you define that? I tell you what, strike that question, I think we can approach that a little better.

Would you take across the states, it is outlined by states, but take a cross for the United States?

A. Yes.

Q. And give an example of that.

A. These are all in millions of tons. All of these figures are in units of a million beyond the unit I give.

Of the estimated original reserves of the bituminous coal represented 807,420; sub-bituminous coal, 437,742; lignite, 447,966; anthracite and semi-anthracite, 25,836, and the total estimated original reserves of 1,719,964.

Then there was up until January 1st, 1960, accumulated production from these reserves of 29,837, remembering these are still in units of millions.

Q. All right.

A. So that the production plus the loss in mining up until January 1st, 1960, was 59,674, remaining reserves as of January 1, 1960, 1,660,290, and recoverable reserves of January 1st, 1960, assuming 50 per cent recovery, 830,145.

Q. Now, let's take the State of Tennessee and g
4735 across on that.

A. In the State of Tennessee, again speaking in term of millions of tons beyond the figure I give, the bituminou coal reserves original estimated reserves of 1,912 and th total coal reserves, original reserves, 1,912, the accumulate production was 6, meaning, of course, 6 million tons, an the production plus loss of mining was 12, so the remainin reserves as of January 1st, 1960, 1,900, recoverable reserve of January 1st, 1960, assuming 50 per cent recovery, wa 950.

Q. Now, according to these figures here, what per cen of the original reserves of recoverable coal, how much d they discount it?

A. Fifty per cent.

Q. Fifty per cent?

A. Yes.

Q. That's in Tennessee?

A. That is used as a nationwide and a state figure as a rule.

Q. That there is 50 per cent recovery from original coal?

A. Right.

Q. All right. Now, would you go across on Kentucky, please, on that?

A. For Kentucky, estimated original reserves,
4736 bituminous coal, 72,318, total, 72,318; accumulated production, 7,646; production plus loss of mining, 5,292; remaining reserves, 67,026, and recoverable reserves, January 1st, 1960, assuming 50 per cent recovery, 33,513.

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4784 C. EDWIN ROSS,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

Testimony of C. Edwin Ross—Direct

DIRECT EXAMINATION

By Mr. Combs:

Q. Would you state your name, please?

A. C. Edwin Ross.

Q. Where do you live, Mr. Ross?

A. Roane County, near Oliver Springs, Tennessee.

Q. What is your occupation?

A. Representative of District 19, United Mine Workers.

Q. How long have you been a representative of District 19, when did you first become a representative?

A. January 1st, 1957.

Q. Now, what did you do prior to becoming a field representative?

A. Worked in the coal mines.

Q. At what coal mine did you work at?

A. I last worked for Tennessee Consolidated Coal Company.

Q. Now, how long had you worked for that company?

A. The last employment was since May, 1929, through December, 1956.

4785 Q. And were you employed by that company prior to that?

A. Yes, sir.

Q. What time was that?

A. I had worked some for them in '23 and '24 and again in '26 and '27.

Q. Why did you leave the employment of the Tennessee Consolidated Coal Company during this time?

A. What did I do in the mines?

Q. No. Why did you quit work there at that time?

A. I was asked to go to work for the union District 19.

Q. I am talking about the period of time between 1920 and 1924, why did you leave?

A. Well, we had a strike in 1924, the company locked the mines out and shut the mines down for six months and I went

to South Pittsburgh and worked in the stove foundry and to Chattanooga and wrote insurance.

Q. Then you came back in 1929?

A. I came back in 1925.

Q. Now, Mr. Ross, did you belong to the local union at the Tennessee Consolidated?

A. Yes, sir, I did.

Q. What was the number of that local union?

A. 5881.

4786 Q. Did you serve as an officer or mine committeeman at that local?

A. Yes, sir.

Q. Now, describe briefly the type of work that you did in the mine for the Tennessee Consolidated Coal Company.

A. Well, I loaded coal, laid track, and after 1950, through '56, I run a loader.

Q. What kind of a loader was this?

A. It was a Jeffrey conveyor loader mobile loader.

Q. Did there come a time in 1937 when you were elected on the policy committee of the United Mine Workers?

A. That's right.

Q. Did you participate in wage negotiations at that time?

A. I did.

Q. And where did you go to participate?

A. New York City, New York.

Q. And who were you representing at that time?

A. Who was I representing?

Q. Yes. District 19?

A. District 19.

Q. How many committeemen were there with you at this time?

A. Three.

Q. Three. Now, were you again elected a member

4787 of the policy committee after that?

A. Again in '47.

Q. And did you participate in the negotiations of the contract at that time?

A. I did.

Q. And how many committeemen were with you at that time?

A. There was five at that time.

Q. All representing District 19?

A. Yes.

Q. And where did you go to negotiate that contract?

A. Washington.

Q. Washington, D. C.?

A. That's right.

Q. Now, when you went to work as a field worker in 1958 or '57, what part of Distriset 19 did you work?

A. Southern Tennessee.

Q. Now, who sent you down into southern Tennessee?

A. Mr. Ridings and Albert Pass.

Q. And what was your general duties?

A. What did I do?

Q. Yes.

A. Well, I attended local union meetings and assisted them in the meetings, take up grievances under our contract, and investigate on membership.

4788 Q. How long did you stay in that section of Tennessee?

A. I stayed there until March of '58.

Q. March of '58?

A. Yes.

Q. Now, where did you go then, when you were transferred?

A. I went up in the Lake City-New River area, east Tennessee.

Q. Now, after you were sent up in east Tennessee did there come a time in September of 1962 when you went back in southern Tennessee?

A. Yes, sir. Mr. Ridings sent me back down here to assist the field workers down here a short time.

Q. Who was Mr. Ridings?

A. President of District 19.

Q. Now, what did you do at this time, September of 1962?

A. Well.

Q. First let me ask you this —

A. (Interposing) Mr. Ridings told me to come down, that they had been some rumors going around and that he wanted that mine to be sure and operate, for me to come down and counsel with them men and advise them to keep working.

Q. You say "that mine," what mine, Mr. Ross?

4789 A. That was the Allen and Garcia Coal Company.

Q. All right. Just go ahead and tell what you did.

A. Well, I come down and I went out to the Palmer with Mr. Howard Madewell and we investigated and we found out there that some of the men were saying that the mine wasn't on contract and we went up to the road the next morning and told the men to go on and to continue work and be sure not to stop that mine, that it was on contract, and the next day then we called William Turnblazer, who was our attorney, for information, and he said for me and Howard Madewell to go to Mr. Fitzgerald, who was with Allen and Garcia Coal Company, and inquiry if the mine was on contract, and we went to him and asked him and he said it was, that the old opening had fell in, he just moved it to another opening and that the mine was on contract.

Q. Now, do you recall, when you are talking about an old opening now, what mine was that, was that the Coal Valley mine?

A. Well, it was over in the Grays Creek section.

Q. The old mine.

A. Was the Coal Valley mine that they worked at, they worked over on No. 11, I guess.

Q. Had moved from an old mine over to the new mine?

A. I understood that the mine had fell in and they had opened the new opening there close somewhere.

4790 Q. And Fitzgerald assured you that the contract did apply to the new opening?

A. That's what he said.

Testimony of C. Edwin Ross—Direct

Q. All right. Now, I call your attention to September the 19th, 1962. Were you on the Grays Creek Road about that time?

A. Yes, sir.

Q. What happened there, do you recall what happened, if anything?

A. Well, I went out and talked to the men that was saying they were going to work there, and they said they would like to have a job there and was going to try to get the men to all stick and get a contract so we would be United Mine Workers' mine where they could to go work and while we was talking, why, they was several cars drove up and Paul Callis was in one of the cars, and he got out and started talking to the men and then I went over and talked to him.

Q. All right. Would you tell the Court what your conversation was with Paul Callis?

A. Well, he said he was going to open several mines and was going to go to work and he couldn't fool with the United Mine Workers and I told him all I was out there was to work and try to get my men work and to try to get all I could for the members of my union, and he said he was going to work regardless, and he went about four times to his
4791 car to get in his car and told the men to come on and, "Let's go to work."

* * * * * * * * * * *

4792 Q. They were. Now, did Mr. Callis make a speech there, make a talk to the men and, if so, what did he say?

A. Well, he told them that he was going to open them mines and he was going to go to work and he was going to pay $20.12 a day and he wasn't going to recognize any United Mine Workers' contract.

Q. Did he say anything about trouble developing, what he was going to do?

A. He said he was going to work regardless.

Q. Did he say anything about his experience in the service, about seeing trouble and knowing what it was all about?

A. Well, not when he was talking to me. When I
4793 walked up and I heard him say that he had been in the service and that he had saw bloodshed and he might see some more.

Q. And he was saying that to the crowd of men that were there?

A. The men he was talking to.

Q. Now, what happened after that, did you leave that place?

A. Well, they said they was going to work and the men said that they was going to stop them, and I said, "You better not do that. Come on, let's go home, and we don't want no trouble here." And I pleaded with the men to stick together and try to get a contract there, and advised them to leave and go on home and I got back in the car and went on back to Jasper to Howard Madewell's and they told me —

Q. (Interposing) Now, you say that you went down there on instructions of Mr. Jim Ridings in September of 1962. How long did you stay down there at this time?

A. I think I had went down there a few days before that, probably about two weeks, the best I recall.

Q. You stayed there about two weeks?

A. Yes, sir.

Q. In 1962?

A. Yes, sir.

Q. Then did you go back then to east Tennessee?

A. Yes, sir.

4794 Q. Is that where your duties were?

A. Yes, sir.

Q. Have you been back in southern Tennessee since that time?

A. Not to work, no. No, I got some people I come down to visit is all.

Q. But your duties have been in east Tennessee since that time?

A. Yes, sir.

Mr. Combs: I believe that is all.

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4806 ALLEN CONDRA,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Combs:

Q. Will you state your name, please?

A. Allen Condra.

Q. Where do you live, Mr. Condra?

A. Madisonville, Kentucky.

Q. What is your occupation?

A. International representative, United Mine
4807 Workers of America.

Q. How long have you been a national representative of the United Mine Workers of America?

A. Since January the 4th, 1943.

Q. Have you had an occasion to work in District No. 19 as an international representative?

A. I have.

Q. At different times?

A. Yes, sir.

Q. Briefly would you tell the times that you worked for District 19?

A. The last time that I was in District 19 was down here, September the 14th, 1955.

Q. Did you work for District 19 prior to that?

A. Yes.

Q. Are you a native of Tennessee?

A. Yes, sir, I am.

Q. Where are you assigned now?

A. District 23, west Kentucky, Madisonville.

Q. All right. Now, in September of 1955 you say you were in District 19?

A. Yes, sir.

Q. What was the occasion of you being assigned to District 19 at that time?

A. There was a work stoppage down here at that
4808 time and the district president, Mr. Thomasson at that time was ill and Mr. Ridings was filling in his place and he was also ill. They were shorthanded, and I was designated by the International Union to come down here to assist temporarily.

Q. Was Mr. Ridings a board member at that time?

A. Yes, he was an international board member.

Q. Now, what did you do when you came down, what was the situation that you found when you came down to District 19? Well, first, strike that. Where were you assigned by Mr. Ridings?

A. To the southern Tennessee area, Whitwell-Jasper and Palmer and Lookout Mountain area. Smoky Row area, through here.

Q. All right. What was the situation you found in that field when you began work?

A. Well, there was a number of men that were not working, the mines were down and they told me the reason they wasn't working was that they had not received a vacation that year and that the companies were not paying the royalty payment to the United Mine Workers and they had told them they were not going to pay it and they ceased work.

Q. Did you advise those men — what did you do?

A. Well, I advised the men they should return to work and take up their problems and work them out while the
mine was working, but we were not very successful
4809 in getting that accomplished immediately.

Q. Were you in and out of that field at that time?

* * * * * * * * * *

A. Yes, I was. I was circulating around among the men up and down the valley.

Q. Did you see groups of men from time to time on the roads up in that section?

A. There was a picket line in the Smoky Mountain Row near Lookout Mountain that I was at several times.

Q. Now, you say a "picket line." Would you describe who were the people, what kind of picket line?

A. Well, there was a few of the men that would gather there of a morning, those men up there, at least part of them, I don't know how many, were not under contract and they wanted a contract in that area, Smoky Mountain area, and they would stop working trying to secure a contract, so I was advised.

Q. And they were out when you went there?

A. That's it, they were out when I went down there in that particular area.

Q. I call your attention to the morning of October the 4th or thereabouts, in 1955. Were you on the Smoky Row on Signal Mountain?

A. Yes, sir, that's right, I sure was.

4810 Q. Do you recall any incident that occurred there?

A. I remember that one, one very well. I went out there that morning, October the 4th, and some of the men who were there that morning in the picket line, oh, I'd say 12 or 15 were there, told me that they had a report from somewhere that the operators was going to break up our picket line that morning. I wasn't particularly concerned with this, because I didn't think that they would try that, if they were going to try it, I doubted if they would have sent word ahead of time that they were going to, and I didn't think any more about it.

I was sitting behind the steering wheel of my car that morning about 8:00 o'clock reading the Chattanooga Times, and I heard a shot, and I looked around to see what it was, and about that time there was another one, and the second one shot the window of my car, car window, rear window

out of the door right behind my head, about 6 or 8 inches behind my head, and I got out of the car and then it was a few men standing around my car and sitting around there, and one of them started around my car, the Phillips boy, A. V. Phillips, and he was shot through the side here (indicating), and another one of the boys, Billy North, started opening the back door of my car to get in it, and the end of his thumb was shot. So we took those boys in to Chattanooga to the hospital.

4811 Q. Now, first, could you tell from what direction these shots were coming from?

A. They seemed to be coming from what appeared to be an old abandoned strip pit some distance away from it is where it seemed to be coming from, the best we could tell.

Q. How many shots do you estimate were fired there?

A. Well, I don't know, things like that happen so fast it's hard to say, I would say possibly eight or nine shots, I am guessing now, as I say, it happened so fast that you just can't keep track of it. I know there was one that, as far as I know, didn't hit anything, the second one that I heard hit the window and in the rear door of my car.

Q. Would you have any idea what type of firearm that was doing the shooting?

A. I am no authority on those things, shells and so forth, but some of the fellows said it was a high-powered rifle.

Q. Did you see anyone doing the shooting?

A. No, I didn't see anyone, no.

Q. And you took these men to the hospital. Who went with you?

A. Well, there were several of the boys went with us, I don't remember all of them, but Mr. Gilbert was one of them, George Gilbert.

Q. Was he a fieldworker for 19?

4812 A. Yes, he was.

Q. What hospital did you go to?

A. Newell Clinic or Newell Hospital, I believe is the name of it.

Q. You left the men at the hospital?

A. Yes, sir, one of them. Now, the North boy did not remain, the one that had the end of his finger chipped a little bit, but the Phillips boy remained in the hospital.

Q. Now, at the time that this firing took place, what were these men doing around your car?

A. They were just sitting around there, I believe that four of them were sitting there playing cards along the side of my car, and the others were just sitting around there talking.

Q. Did you see any firearms in that group?

A. No, sir, I sure didn't.

Q. Was there any kind of disturbance, yelling or anything of that type?

A. No, sir, everything was very quiet. I might say, too, that one of the shots hit Mr. Gilbert's car in the back, the trunk, the trunk lid of his car was also hit.

Q. Was Mr. Gilbert present when you went over there or did he go with you?

A. We went in separate cars, I don't recall which one of us got there first.

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4813 Q. Mr. Condra, while you were there during this period of time, did you at any time own or possess a machinegun?

A. I never in my life. I might furthermore say that I never owned or possessed a gun of any kind in my life, and I never carried a gun in my life of any kind, either on my person or in my automobile.

Q. Did you see any machinegun in anybody else's car while you were in southern Tennessee of any kind?

A. No, sir, I did not.

Mr. Combs: You may ask him.

CROSS EXAMINATION

By Mr. Ables:

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4815 Q. Now, when you arrived you say you had a little dispute about wages or vacation pay or something like that?

A. I didn't have any dispute. The men told me that that was their problem, that the companies had not paid their vacation and they were not paying their royalty and said they were not going to.

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4823 GEORGE GILBERT,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Owens:

Q. Will you state your name and address, please?

A. George Gilbert; Neon, Kentucky, at the present 4824 time.

Q. Do you have a job with the United Mine Workers of America?

* * * * * * * * * *

A. I do.

Q. Will you state what that job is?

A. I am a fieldman in District 30, headquarters in Pikeville, Kentucky.

Q. Is that what is referred to as a field representative?

A. Field representative.

Q. How long have you been there?

A. Since October the 18th, 1938.

Q. You have been in Kentucky since 1938?

A. I have been in District 30 since April 1 of this year, '65.

Q. And where were you before that?

A. I was in Middlesboro, Kentucky, in Bell County for four years.

Q. Were you a field representative in southern Tennessee?

A. Yes, sir.

Q. What years were you a field representative there?

4825 A. I began fieldwork there in April 28th, 1953, and worked through March the 28th in '61.

Q. How long have you been a member of the United Mine Workers of America?

A. I have been a member of the United Mine Workers since the 7th day of July, 1921.

Q. I want to call your attention to the year 1955. Was there a dispute in southern Tennessee during that year?

A. There was with the small operators.

Q. You say "the small operators," are you talking about the hand-loading operators?

A. The hand-loading operators.

Q. What was that dispute?

A. Vacation pay.

Q. When did that start?

A. That started sometime in August of 1955, immediately after the vacation period in 1955.

Q. Did that result in a work stoppage?

A. It did.

Q. At what mines?

A. The mines, the small hand-loading mines, all of them.

Q. Did it involve the Coal Valley mine or the Reel's Cove mine?

A. No, sir, it did not.

4826 Q. Did they ever shut down?

A. Yes, they did.

Q. Did they stay down during the period that the dispute was on?

A. Yes, they did.

Q. The entire time?

A. The entire time, I believe.

Q. I mean the Coal Valley mine and the Reel's Cove mine, were they shut down during that entire period of time?

A. First they was working and the small mines went down on the vacation grievance and then the two big mines, Paul Callis, who was connected with the Tennessee Consolidated, and Woody Travis, Woodrow Travis, was the general superintendent of Tennessee Products and Chemical, they worked up a strike and had the small operators and truck drivers to picket the big mine and shut it down.

Paul Callis come to me and told me if I would go along with him and assist him that he would get a dollar out of the TVA per ton and we would never have no more trouble.

Q. Well?

A. I told him that I couldn't do that.

Q. Well, did you instruct or advise the members of Coal Valley, the employees of Coal Valley and Reel's Cove to return to work?

A. I did. I worked long hours each day trying to
4827 get them to return to work.

Q. Were you finally successful?

A. Yes, sir.

Q. All right. Now, did the Welfare Fund royalty become involved in this dispute?

A. It did.

Q. How did that occur?

A. Well, while we was negotiating and trying to settle the vacation, some of the members had statements where they had loaded and been paid for more coal than the coal company had turned in for Welfare, and he was working 20 men, or approximately 20 men, and that brought up the question and then Secretary Pass went to Middlesboro and checked his records and came back and checked and found that all of them — all the small operators owed a considerable bunch of money and that brought into the negotiations the Welfare question.

Q. You say "Secretary Pass," you mean Albert Pass?

A. Secretary Albert Pass.

Q. Secretary-treasurer of District 19?

A. Now, yes, sir.

Q. Now, during that period did you know if there was an amendment to the national contract?

A. They was.

4828 Q. Did that then become involved in the dispute?

A. It did.

Q. All right. Now, what did you do about it, did you have meetings with the operators?

A. We had meetings with the operators at different times and the two big companies who was the lessees to these small operators, they headed the negotiations for the company.

Q. All right. Tell who these people were.

A. Well, they was Paul Callis and Everett Roberts on the Tennessee — and Ewing Hampton was in on it on the Tennessee Consolidated property. For Tennessee Products and Chemical Corporation, it was Woody Travis, Jim Miller, Herschel Daffron, and others.

Q. Was there any representatives of the small handloading operators there?

A. There was.

Q. Name those.

A. Well, Jim Patton, Earl Patton, that was on the Tennessee Consolidated side, Ewing Hampton was on one of the small operators' committees, George Bryant, on the Tennessee Products, Leonard Birdwell, Tommy Cates, and Jim Miller, he is connected with the small operators, he was on that committee.

Q. Do you recall how many times you met with this group?

4829 A. I don't recall how many times, no, sir, it was a number of times.

Q. Do you recall an incident at your house where the operators came to your house?

A. I do.

Q. Will you tell us about that?

A. Well, one evening late in the afternoon my telephone rang. We were sitting, Albert Pass and myself and others were sitting in my living room and the telephone rang.

I got up and answered the telephone and it was the general superintendent of the Tennessee Products.

Q. Who was that?

A. Herschel Daffron. He called me and said that they was a picket line on the way to my house and that he didn't approve of it. He said it wouldn't help the so-and-so situation, and I hung up the telephone. By the time I walked back into the living room the highway, which is 60, 55 or 60 feet from my doorstep, or maybe a little farther, they were parking along the side of the road, and several of them had pulled in my driveway and blocked my driveway. They had two men from the press with them. One of them was up in my yard and the other one was sitting his camera up in my driveway, and my wife was sick and a neighbor lady was in the car when they pulled in and blocked the car, they was going out to go to a doctor, and I asked those paper representatives to leave. I told them I didn't
4830 want them there, and they did, they unblocked the driveway, and the operators, small operators, Paul Gibbs and others, they came up to my yard.

By that time James Miller, who was connected with Tennessee Products, he began to get them to leave. A big majority of them did leave. Some stayed.

They wanted to know how that they could settle the matter. Albert Pass did the talking to them. He told them how they could settle it, settle the vacation pay and straighten up the royalty.

So they, some of them stayed there and negotiated with us for a couple of hours and signed the contract. Albert Pass took my typewriter and typed up a checkoff, an authorization for the 40 cents. They signed it. When they left, they promised us to get the rest of the operators in a meeting the next morning at 9:00 o'clock at Whitwell, Tennessee.

Q. Did you threaten to shoot this newspaperman or representative of the press?

A. I did not.

Q. Now—

A. (Interposing) In fact, I got a letter from those two men from the press and apologizing to me. I have the letter somewheres now, but my belongings have been packed up for four years and I haven't been able to find it, but I got the letter where they apologized for being there.

4831 Q. What was this authorization, to withhold the Welfare Fund, do you recall the details of that, or when that was going into effect?

A. Yes, sir. I don't recall the wording, but it called for the two big companies to check, to hold 40 cents a ton on all coal mined on new business, and we knew that the new business was coming soon because they had some business contracted, according to their word, expired in a short time, so after several negotiations, that was what we agreed to on new business.

Q. Did the Tennessee Products officials and the Tennessee Consolidated agree to that also?

A. They did.

Q. How about the vacation pay, was any settlement of that?

A. The vacation pay was agreed to be paid by the month at the rate of $11.67, I believe.

Q. Did you make any agreement that they did not have to pay the Welfare Fund on the old business?

A. Never.

* * * * * * * * * *

4833 Q. Do you recall any dispute that arose in 1957?

A. Yes, sir. The 1956 agreement came in in October and they was a dollar and twenty cents put on the men's pay at first when the agreement took effect, and it was a $2.00 increase per day, and they was 80 cents carried over from '56 to April 1, 1957.

We had a few days at the small hand-loading mines over that 80 cents. The companies had signed the contract and was under contract, and they refused to pay the 80 cents, told their employees they weren't going to put it on, and the men at the small hand-loading mines quit.

We met in different groups and after a few days they agreed to put the 80 cents in effect, and I advised the men to return to work and they did.

Q. All right. Now, I want to ask you or direct your attention to the year 1960. Do you recall an incident that involved the opening of the Grays Creek No. 11 mine in 1960?

A. Yes, sir.

4834 Q. Do you recall the approximate date that this occurred?

A. Yes, sir, I think it occurred on the 16th day of August, although I was in Middlesboro, Kentucky, and had been in Middlesboro, Kentucky, since the 14th of August. I went to Middlesboro on the 14th.

Q. Do you remember what day that was that you went to Middlesboro?

A. Yes, sir, I went to Middlesboro on a Saturday.

Q. And what was the purpose of going to Middlesboro?

A. Well, I had been notified by the district president that there would be a board meeting on the 15th, on a Monday. So I had several things to see about, and I went a couple of days early, and then on the 15th I attended the board meeting.

Q. Now, what is the board meeting?

A. The board meeting is made up of the district president, the secretary and treasurer and the fieldmen and the purpose of the board meeting, they have membership questions and other business that they meet about twice a year and sometimes once a year and take care of and that's what.

Q. All right. Did you attend that board meeting?

A. I did.

Q. Where were you on Tuesday?

A. I were in the district office. I stayed at the
4835 Cumberland Hotel in Middlesboro, Kentucky, and I had a secretary with me from Local 7083, who is Bryan Parmalee. It was a large local union. We had several hospital cards that had been questioned, and we were trying to get them cleared up, and we stayed over after the board meeting Tuesday and was in the office until 1:00 o'clock working on that matter.

Q. All right. Now, did you then learn that there had been some difficulty in the Grays Creek area?

A. The first I learned about the difficulty in the Grays Creek area, I were downstairs where the girls take care of the hospital forms and working on that, and Albert Pass called downstairs and told them to tell me to come back up there in the district president's office before leaving town.

So immediately I went back up to talk to him and President Ridings and he informed me that Henry Turner had called in and said they was some picketing at the Grays Creek area.

Q. What did he tell you to do, if anything?

A. He told me to immediately return to southern Tennessee and straighten out whatever was wrong, and I did.

I left Middlesboro that day, on Tuesday, the 16th, about
1:00 o'clock, arrived in Jasper, Tennessee, about 5:15.
4836 Q. All right. Now, did you know when you were in Middlesboro or when you went there that Mr. Gibbs or anybody was going up to start a new mine in the Grays Creek area?

A. No, sir. I knowed that they was going to be some mines opened up in the Grays Creek area, but Paul Callis had made several speeches over at the bathhouse at the Reel's Cove mine.

Q. At the Reel's Cove mine?

A. No, at the Coal Valley mine, I beg your pardon, the Coal Valley mine, and promised those men at the Coal

Valley that that would be their home and they was figuring that's what they were believing and we was all under the impression that the Grays Creek mine when opened would be given to the men at the Coal Valley mine who was on a panel at that particular time.

Q. All right. Now, what did you do about this, you say?

A. On the 16th I didn't do anything. Of course, when I got home, they was a number of telephone calls. I was tired, and I didn't intend to get out in the nighttime and do anything that particular night.

I waited until the next morning, on the 17th, and I went into the Grays Creek area, checked the matter, and there was a large bunch of pickets there, a very large bunch.

4837 I checked it and went back to my telephone and called Mr. Ridings, who was responsible for the district, and told him what was going on. He told me immediately to return back up there and cut that picket line down to a small picket line and keep it that way.

So I returned on the same day and started working trying to get the large line cut down to a small picket line. Two or three days, I wouldn't say how many days, two or three days. I did get it cut down to a small picket line, and it remained.

Q. What is "small," what are you talking about "small"?

A. Four or five men.

Q. All right.

A. I got it cut down to four or five men, and it remained that way quite a while. While Mr. Ridings was giving orders over the telephone he asked me if the other mines was working. I told him they was.

Q. What other mines are you referring to?

A. I am referring to the small operators, independent, they was some independent operators in there.

Q. All right. How long did this picketing go on, do you recall?

A. No, I don't recall how long it went on, but that was

in August of 1960, and I left there on the 27th day of
4838 March in '61, and it was still going on.

Q. All right. Do you know if the mines in the Pocket continued to operate while this picket line was on?

A. They did.

Q. Do you know if Mr. Gibbs' mines operated?

A. It did.

Q. Did he have more than one mine or only one mine at that time, do you know?

A. I believe that he had the one mine, No. 59 mine in the Pocket, he had had 58, when this 59 mine was actually two mines, No. 60 mine, I think he was operating it, too, but it was all coming out to the 59 tipple. I wouldn't say whether it was 58 that was operating at that time, if it was, it was very little.

Q. Were those mines under contract with the United Mine Workers?

A. They was.

Q. Now, did Mr. Gibbs also own and operate some trucks hauling coal in that area?

A. He did.

Q. Do you know if he continued to operate?

A. They did.

Q. Now, did you have a conversation with Mr. Gibbs after the 16th or sometime around there on the telephone?

A. When I came home on the 16th at night my
4839 wife had on my telephone desk a call from Mr. Gibbs.

I didn't return the call. Some two or three days later Mr. Gibbs called me again, and I talked to him on the telephone. I never did talk personally with him again.

Q. What was the subject of that conversation on the phone?

A. That subject was that Mr. Paul Gibbs said that he was sorry that he had caused any trouble out there and that he wanted to see me for a favor and he asked me, he said that his wife had had a small pocket gun that was give

to her for her birthday by her son and that he had lost the gun on the 16th at Grays Creek.

I told him that was too bad.

He said, "Now I know that you can get it."

Well, I said, "I don't know how I could because I don't have any idea. I wasn't in this county. I don't have any idea who has got your gun."

I asked him if he had any idea who got it. He didn't. And I asked him, I said, "How do you think that I could get your gun?"

I said, "If I could, I would get your gun." And that was the last time that I have talked to Mr. Gibbs.

Q. All right. Did Mr. Woody Travis try to arrange a meeting with you in a cemetery with Mr. Gibbs?

A. In a cemetery?

4840 Q. Or any place?

A. No, sir, I don't think — I don't recall any meeting that Mr. Travis — now, Mr. Travis talked to me about Paul Gibbs.

Q. When was this?

A. Well, it was some few days, maybe the 17th or 18th of August. He also had a call in for me when I returned from Middlesboro on the 16th. I didn't return that call, but in the next few days I either talked to him by telephone or personally with him, because Mr. Travis was a very friendly kind of a man and him and I talked very often, but he talked to me about Paul Gibbs, and he said that Paul Gibbs had stirred up a lot of trouble and was going to, looked like he had destroyed the whole setup and he says, "I am going to get rid of him because I caught his son a stealing coal and hauling it to Jim Campbell's tipple." He said, "I have the grounds to do it on."

And I said, "I don't have any comment about that. I don't hire your operators or I don't get rid of them for you."

Q. All right. Do you know a man named Sam Swope?

A. Sam Swope? No, sir.

Q. Did you ever have an incident where you were — by the way, where was the picketing when you had the three or four pickets there, what was the location of that
4841 picketing, do you know?

A. You talking about these —

Q. (Interposing) In 1960.

A. Well, the picketing was down in the Pocket Road about approximately one mile from 108 Highway and at a big coal bin at the Tennessee Consolidated Coal Company's stockpile, to bring it up from under the hill with small trucks and then they had some big 26- to 30-ton trucks that would pick it out of this storage bin and that picket line was at the Grays Creek section of the road where the left road went on down to the Pocket and the right road went over in Grays Creek, that's where the picketing was.

Q. And did you engage in picketing yourself?

A. No, sir, I never did.

Q. Who were the people that were on that picket line?

A. Well, it was the men who had worked for the Tennessee Consolidated Coal Company at the Coal Valley mine and was on a panel from Palmer.

Q. Did you set that picket line up yourself?

A. No, sir, they set it up.

Q. All right. Now, getting back to Sam Swope, was there ever a time near that picket line where a couple of men came and asked you if they or how to get to the Whitwell Coal Company's stripping operations?

A. No. sir.

4842 Q. Did anyone tell you that they were in there to sell something from the Power Equipment Company?

A. I never heard of the Power Equipment Company until I heard of this Sam Swope, I didn't know Sam Swope or I didn't know the Power Equipment Company.

Q. Did you direct the men to go down or to tell them that they could get to the Whitwell Company by going past where

there was a picket line and tell them to tell those boys or "my boys" that it's all right to go through?

A. I never told anyone no such.

Q. Can you actually get through to the Whitwell Coal Company by going past this picket line?

A. I know that country, I stayed in there several years. At that particular time you could not get to the Whitwell Coal Company down through the Grays Creek section, later on in later years a strip mine come around that mountain for the Coal Valley mine and opened up a road in there, I understand they are a road in there now, but they wasn't no road to get an automobile around there at that time.

Q. Now, prior to 1960 did Mr. Gibbs sign a 1959 amendment to the contract?

A. Mr. Gibbs?

Q. Yes.

A. Yes, sir.

4843 Q. Did you tell Mr. Gibbs to "sign it and the Fund won't sue you as I have always taken care of you"?

A. I never told no operator, not Mr. Gibbs or no other operator and I signed all those small operators in that area. I never had a single man to ask me anything about the contract because the two big companies, when they signed they would always call me, Everett Roberts for the Tennessee Consolidated Coal Company and Woody Travis for the Tennessee Products, and they would ask me where I wanted to meet the small operators to get them to sign, and I would meet the Palmer people most of the time at the union hall in the Pocket. I remember that I met the Tennessee Consolidated people at Palmer at the union hall from Palmer, the Pocket area. They all signed the contract. Mr. Willis Flynn was there, and he slipped out and didn't sign it, went on for some time, and I found when I check*ing* my record, I finally found that Flynn hadn't signed the contract, and I went to his mine and he signed and laughed about it and never asked me any questions nor I never told him anything.

Q. Did you tell Mr. Flynn or any other of these small operators, either on Consolidated property or on the Products property, that they didn't need to pay the Welfare Fund or the wages that was provided for in the contract?

A. I never told any operator in all the 27 years I have been with the United Mine Workers nothing like that.

4844 Q. Did you tell them to pay "what you can"?

A. I never thought about telling them no such.

Q. Did you tell them to falsify their reports to the Welfare Fund and not turn in the tonnage to them?

A. That's ridiculous, I did not.

Q. Now, during this period of time, did the hand-loading operators also own trucks or fleets of trucks?

A. The most of them, yes, sir, they did.

Q. Did you ever have any disputes over this?

A. They caused me a lot of trouble and wildcat strikes. A great number of those operators had trucks, and especially when they had a wage increase that would come along they would claim that the company was chiseling on them, the two big companies they was leasing from, and they would grumble around a while and then they would have their truck drivers to block the scales and strike. That would stop the whole production everywhere. Then I would have to go and be out long hours to get the people back to work.

Q. Do you remember the names of any operators that did this?

A. Paul Gibbs was one of them and J. H. Grim was one, and frankly, all of them that had those trucks. Willis Flynn had trucks, he was one of the fellows that would get stirred

up and cause a lot of trouble about it and stop the 4845 mines.

Q. Now, do you know of a man named Edward Nunley?

A. I certainly do.

Q. Does he have a nickname of Tojo.

A. Better known in that area as Tojo Nunley.

Q. Did you have any discussions during the year of 1957 with Edward Nunley regarding the operation of his mine?

A. Yes, sir. I recall Edward Nunley, he came right—he had a mine over in what was known as the East Valley, and the property was, I believe, on the State's property.

Q. On the whose property?

A. On the property of the State.

Q. What was the name of that company, do you know?

A. Tojo's company?

Q. Yes.

A. I believe that he signed the contracts under the Edward Nunley.

Q. Do you know if there was an East Valley Coal Company?

A. Yes.

Q. Was that the mine?

A. Well, I don't recall whether he signed—that's the mine, yes, sir.

Q. All right. What was the substance of this conversation?

4846 A. Nunley told me one day that he had some men that wasn't signed up. It was a big turnover in the labor at these small mines, and his mines was way in the gulf over in the East Valley, coming up into the Walden's Ridge section, and I was going up the gulf to go up to his mines and I come up to a tipple being built on the right side of the creek and no coal seam there.

I stopped there and Tojo was there working, just finishing the tipple up and a bulldozer was up in the bank making the road where trucks could get up to it to dump into the bin. I asked him why he was building a tipple there.

He says that Travis had bought into his company and they was going to run a good bit of coal and that the TVA had been penalizing him for bad dirty coal and he was going to—

Q. (Interposing) What do you mean by "dirty coal"?

A. Well, this seam of coal he was working on Walden's Ridge side was full of soft and it wouldn't sell like the Whitwell coal would, Whitwell was a better grade of coal and it was a different seam of coal, so he told me that he built that tipple, he was going to bring some of his trucks up there and dump them into this storage bin and load his trucks at the mines and then cap them off with about 2 foot of clean coal, the Whitwell coal.

4847 Q. Did you tell him not to do that?

A. No, sir.

Q. Did you tell him that he had to take coal from the Whitwell mine?

A. No, sir; no, sir, never.

Q. Did you ever tell him that he had to put his coal in from the other mines on these TVA contracts?

A. No, sir, I told him nothing about his operations.

Q. All right. Now, do you know Leon Nunley?

A. I know Leon very well.

Q. Did Leon Nunley operate any mine during this time?

A. Well, he signed some contracts after Nunley was caught over this coal that I just told you about.

Q. After what Nunley was caught?

A. Tojo.

Q. What do you mean by "after he was caught"?

A. I understand that the TVA caught him on capping this coal off and they blacklisted him from selling coal to the TVA, then Leon Nunley came into it, come into the picture and signed the contract under his name.

They had a mine at Whitwell, two or three mines on this Walden's Ridge set up.

Q. Well, did you ever have any difficulty with Leon

4848 Nunley?

A. Yes, sir. The most difficulty I had with Leon, Leon would send the men's dues back in by check and then later on after the check would go all the way to Washing-

ton they would bounce at the bank and the district office would send them back to me and tell me to collect them immediately, and I would go to Leon at the mines or at his home and get the cash for the checks, or get another check.

I told Leon, I said, "You ought to try to make these checks good, it's causing a lot of trouble and it will get you in trouble."

He said, "Well, I can't do but very little about it, Mr. Gilbert." He said, "I don't own anything at the mines." He said, "This is Tojo's. I am only running it for him under my name and keeping his books." He said, "My wife is keeping part of the books and Tojo's wife is keeping part of the books." And that ended it right there.

Q. All right. Now, I want to ask you about the Whitwell Coal Company. Did you have any labor disputes at the Whitwell Coal Company?

A. Yes, sir, we had a labor dispute at the Whitwell Coal Company.

Q. First, what kind of an operation was that?

A. That was a strip and auger and a double-barreled auger and a large shovel, several bulldozers.

Q. All right. Tell what occurred.

4849 A. The Whitwell Coal Company, Paul Callis, was putting it in. He brought in a big shovel. First brought in a bulldozer and started making a high wall for the auger.

He came to me and told me that the auger was coming, or saw me in Palmer and told me about it. I was in Palmer practically every day or every other day, and the first thing that happened he started paying the bulldozers less than bulldozers strip mine contract.

Then when the shovel and auger came in, I remember he came to me and he tried to bribe me. He said if I would let him pay $2.51 an hour that that would be a good job out there and he would make it worth my while.

So I didn't like that and we had a few words between one another, and I told him that the strip mine contract is what he signed and he signed the contract.

So he started paying the men less than the contract. When the first payday came around, the men quit. Of course, well, I tried to get them back to work, advised them to go back to work and settle the grievance under the contract. After they was out a while, with the help of Albert Pass from Middlesboro, we did get the men to go back to work with the understanding from Paul, Mr. Roberts, that we would arbitrate the case.

If I recall correctly, Paul didn't want to deal with us. He went to Washington and agreed to an arbitrator
4850 in Washington, D. C. They arbitrated the case and we won the case, approximately $7,500 back pay was going to some twenty-some men. They had this money in an escrow. After we won it, I believe me and Albert picked up the escrow money. Albert Pass, that is, and took it on the job over to Whitwell Coal Company and gave it to the men like it should be and they operated thereafter on the scale of the strip mine contract.

Q. Do you know if they had any difficulty operating the strip and auger mine?

A. Yes, sir, I think they had quite a bit of difficulty.

Q. Did you see that operation?

A. I did.

Q. What was it?

A. Well, it was a heavy overburden. The mountain was steep, they was trying to go around the mountain with a wide cut and sandrock, they hand-loaded a lot of sandrock and the sandrock, I understand from talking to people that knows about stripping, I don't know too much about stripping, I know deep mining, but I have talked to people, and they say when you go to handling sandrock with a shovel and bulldozer that you run into a lot of expense, so they did have a lot of difficulty.

Q. All right. Did Mr. Callis complain to you that
4851 there was a lot of absenteeism at the Coal Valley mine?

A. Yes, sir. Mr. Callis regularly was complaining about that while the Coal Valley mine was working, about the absentee. I passed it on to the district officials. Mr. Callis also wrote letters and telephone calls about the absentee, so we were concerned about it, and Albert Pass and myself went to the Coal Valley mine at the bathhouse and met each shift and pleaded with them to cut down on the absentee and to give the people, the coal company, a fair day's work for a fair day's pay, and we did cut down on the absentee, and Mr. Kyle has complimented me on that and I don't know whether he ever talked to Albert about it or not, but he was well pleased about what had happened and what he had done for him.

Q. Did you have any more difficulty after that about absenteeism?

A. No, that seemed to help the absentee. I wouldn't say how far it cut it down, but it did help, because the company, Mr. Roberts and Paul Callis, told me that it done considerable good.

Q. All right. Now, do you know George Ramsey?

A. I do.

Q. Did you talk to Mr. Ramsey in 1955 about signing a contract?

A. In the 1955 agreement I took to Mr. Ramsey's job and he signed the contract.

4852 Q. What did Mr. Ramsey say to you?

A. Well, the job was in operation, Mr. Ramsey was hanging around the shovel. I called him out away from the shovel and told him I had a new contract, and he said he was looking for me. He didn't ask any questions. He signed the contract and I immediately left, because they were operating a lot of machinery moving around there, trucks and that's all that was said.

Q. Did you tell Mr. Ramsey that if he signed the '55

contract that you would put a stop to dynamiting around there?

A. I never thought about it and I never told Mr. Ramsey no such. He knows that, too.

Q. Well, was there any dynamiting going on around there?

A. I never heard of any trouble with that area. They was only two men operating out there, and that was him and a Mr. Lawrence Phipps. Lawrence was a very nice man and I never had any trouble with George Ramsey. I never heard of any dynamiting on his property. He was continuously in it with other people about land and everything else and this and that, but I never heard of any dynamiting whatsoever.

Q. How about the number of men that worked at the mines, do you know the number that worked there?

4853 A. At Ramsey's?

Q. Yes.

A. No, I don't know the number. At first him and this fellow Lawrence Phipps was in partners. Lawrence Phipps was hauling his coal. They fell out and he started his own job, bought a shovel, and then he got a fellow named Jim Campbell, who owned a fleet of trucks, went to hauling his coal and Campbell paid his own men. Campbell's men belonged to the union, and he paid their dues, checked them, but I never did know exactly how many men that Ramsey had, but it was a small crew.

Q. All right. Do you recall a Labor Board election at the mines of Ramsey?

A. Yes, sir.

Q. And at that election it had been voted for the Southern Labor Union?

A. They voted for the Southern Labor Union, I believe we got one vote.

Q. Has there been any strikes or picketing of those mines or at his mine that you know of?

A. Yes, sir, George Ramsey put up a picket line and picketed his own mine for the purpose of getting this Labor Board election, what is known as a quickie election, that was the only picket line.

Q. Have you ever established a picket line there?

4854 A. At George Ramsey's, no.

Q. You know if there has been any strikes at George Ramsey's mine?

A. No, sir.

Q. Did you ever tell Mr. Ramsey not to pay the Welfare Fund and that he wouldn't be sued and that you would take care of it?

A. I did not. I had no authority over the Welfare end of it, not one bit of authority, and I certainly never told George Ramsey no such.

Q. By the way, do you have authority as field representative to negotiate a contract?

A. I did not.

Q. Well, do you or did you at any time during this period of time?

A. How was that?

Q. At any time during that period of time, did you have authority as field representative to negotiate a contract?

A. No, sir, I had no authority to negotiate, no field representative has no authority.

Q. All right. Now, let me ask you, do you know what is called the Griffiths Creek mines?

A. I do.

Q. Do you recall when they first started in oper-

4855 ation?

A. I recall when they started?

Q. Yes.

A. I do.

Q. When was that?

A. I believe that was in 1958.

Q. Do you recall the first man that started up there?

A. Yes, I do.

Q. Who was that?

A. Virgil Thomas was the first man that started down in that Griffiths Creek gulf.

Q. Now, did Mr. Thomas sign a contract with the union?

A. He did.

Q. Tell about how that occurred.

A. Well, Mr. Thomas was the first man that started down in there, and he started in under a mountain that was very, very steep and rocky. He got his mine pretty well ready to produce coal, and it was along in the fall of the year, if I recall correct. I went around there and he signed the contract.

About that time the rainy season had set in and he really had some tough luck. There came a hill break way up on the mountain above his drift mouth and come right down on him. Instead of producing coal, he worked several
4856 weeks and maybe two months or longer before he ever got that mountain break under control where it wouldn't slip down and stop his drift mouth up, but he finally got opened up there and started to producing coal.

Q. Did he ever tell you that this was an experimental mine?

A. Yes, sir, he told me that after he drove inside 75 or 80 feet or maybe a hundred feet, him and I were talking and we were very good friends, and he told me that he was having a hard time there, that the top was so bad that he couldn't turn off any rooms, and he had machinery, had a Joy loader and shuttle cars, and that he was going to make an experimental mine, he was going to drive in, he had to drive in so many feet and turn right and go up the creek and it was a short ways to the head of the gulf, and he was going to cut across and go on over on the right-hand side of the mountain, which was the better coal and better top, and why he was telling me that he wanted to know who he

could get in touch with to explain, he wanted to explain to the Welfare people that he wanted to do that and then pay them the royalty later.

I told him that I had no authority over the Welfare of it, but I gave him Mrs. Josephine Roche, that name and address, and I understand that he did write to her and they made some kind of agreement, and he got in debt
4857 to them several thousand dollars and they give him a chance and he would pay it out and get in again.

Q. Did he ever ask if he could pay less than the 40 cents a ton?

A. Yes, sir, I believe he did.

Q. Did you tell him that he could pay less than the 40 cents a ton?

A. I told him that he could not pay less than the 40 cents, and I told him who to contact to find out about it. I said, "I don't have any authority, it's 40 cents in the contract."

And I understand he did, I believe he told me that he did contact them and he was a man if he told you something that is just the way it was, he would tell you the truth.

Q. Did you tell him to "do the best you can"?

A. No, sir, I never, never, no one.

Q. Did you ever tell him to do the best you can in his mining operations?

A. No, sir.

Q. All right. Now, who else then started up in the Griffiths Creek area, you had Mr. Thomas and who else?

A. I believe the next man that started was Marshall Meeks, I think he had a silent partner by the name of Myers, Bill Myers.

4858 Q. Anybody else?

A. Yes, sir. A feller name of Brown around the mountain at the next mine, was Brown and Condra, Max Condra, they started mines and then—

Q. (Interposing) Did you have any difficulty?

A. Then Nunley started a mine around there, and that was all that was started at the time that I was in there.

Q. All right. Did you have any difficulties with those mines?

A. Yes, sir, I had difficulties at those mines.

Q. What was the first dispute you had?

A. The first dispute at those mines, they were going in under a mountain where the Reel's Cove mine had been operating for a number of years, and Reel's Cove had leased this out to them and the Reel's Cove was a cutting off men pretty regular at that particular time.

Those men, because they was going in the same area where they had mined coal for several years, thought that that should be their work and they picketed those mines down there, those mines that was on the panel.

Q. On what panel?

A. On the Reel's Cove, Tennessee Products and Chemical Corporation's Reel Cove mine. When they picketed, I went down there and tried to get them off with no success.

4859 I didn't get them off. I reported to Middlesboro, Kentucky.

Mr. Ridings came down here and him and I and maybe Turnblazer and Pass might have been on some of the meetings, we had several meetings, and we agreed that a referendum — these Operators agreed to hire from the Reel's Cove panel the next men they hired. It didn't affect the men that they had at that particular time, but they also agreed and Woody Travis was the spokesman for them, they agreed all to hire from the panel the next men they hired.

Q. That agreement, is that what you call a memorandum of understanding?

A. That is correct.

Q. And that was signed in what year, do you remember?

A. I don't remember what year it was, but it was after the '58 agreement, I believe.

* * * * * * * * * *

4863 Q. (Interposing) Let me ask you now where is the Signal Mountain area or Signal Mountain?

A. Signal Mountain?

Q. Yes, what you call Smoky Row?

A. Yes, I know where Smoky Row is.

Q. Is Smoky Row near Signal Mountain?

A. Yes, sir, Signal Mountain town, the west of Smoky Row goes right down in a gulf and goes right down to a deadend and you have to go in there one way and 4864 come right out the same way.

Q. Do you know why it is called Smoky Row?

A. I don't know exactly why it is called Smoky Row, but it is a whiskey area down in there. You go down into that gulf three or four miles down in there, the creek goes over about a 60-foot bluff.

Q. Is there any coal mines in there?

A. There's a few coal mines down in there that—I wouldn't call them coal mines, most of those people in the Smoky Row is well known in this part of the country as a whiskey area, those people that go in there and put in a little opening to throw the Federal men off, they say they was down in here mining coal when they would be a making whiskey. That's what I have been told by—that's general talk.

Q. Were you ever in that area when there was a picket line or a group of miners there?

A. Yes, sir.

Q. All right. Now, when—

A. (Interposing) I had—

Q. (Interposing) When was that?

A. That was in 1955.

Q. All right. Now, tell about that.

A. Well, I had four men come to my house and the spokesman for them was a fellow named Phillips. 4865 They wanted the union in there, I had never been into Smoky Row, and I signed them four men up in my living room, give them some cards, and they went back into

the Smoky Row and they signed up 40 or 45 men and then I called on the companies for recognition. They refused.

So Phillips was the leader. He brought them on out on a strike and, of course, I visited in there pretty often to see if I could get the operators to agree to sign the contract and they never would, and so, oh, about the 4th, I believe on the 4th of October, 1955, I went in there early one morning and Phillips and eight or ten men was there and some of them reported to me that, "We are going to get shot into that morning."

I says, "I don't believe it."

I thought it was a bathhouse propaganda, what the coal miners have a word of saying "bathhouse propaganda," I thought it was propaganda, I didn't think anybody would shoot into us, but along up in the morning they did and they shot this fellow Phillips and they shot another boy around through the side.

The shots came from an old strip that was over about 200 yards away, I guess.

Q. All right. Now, do you remember a deputy sheriff by the name of Grant being there?

A. Hubert Grant, yes, sir.

4866 Q. Was he there that day?

A. No, sir.

Q. When was he there?

A. Well, the first that I came into contact with him, I picked those men up along with another international representative, Allen Condra, and we took them to the hospital. We left Phillips in the hospital, the other man, the bullet hit him and grazed him and didn't do much damage to him. They dressed him and he went on.

So the next few days, I wouldn't say how long, but the next few days they was a picket line went back in there because of this shooting and I heard about it and told them in there, I saw Grant there that day.

Q. What occurred?

A. By the time I got in there there was quite a crowd

down in there, and I had talked to somebody at the district office. They told me to go in there and get them out.

So about the time I got there Mr. Grant got there and was talking to the men when I drove down, when I got down to them to the scene.

Q. What did he say to you?

A. He had took a .22 rifle off of somebody and he wanted to know if they was any violence in there.

Q. I told him I hadn't seen any and I didn't think
4867 there would be any, but I also told him that I had came in there to take the men back out.

He said, "Well, if you will do that," he says, "I will return the rifle."

And I said, "Why?" There was a row of houses right up on the bank. I called his attention to several people up on the porches and in their yards with rifles and I told him that these men had guns, been shot, and I says, "Do you see what these people are going to do. That's the reason I am taking them out."

And he said, "Well, I can't do nothing about that because they are at home."

So I got up on the bank and I appealed to the men the second time and they agreed, but I asked Mr. Grant before I appealed to them if he would stay, he had some men with him, if he would stay there and see that those miners didn't get shot by those people that had the guns up on the bank, up at the houses, and he said he would gladly stay there until the last miner went out.

I says, "I will certainly take them out, I think I can, and I will." So I appealed to them and they followed me out of the section and went home, I presume.

A. I don't know whether I asked you this or not, but I will repeat it if I did. Over in the hand-loading mines of either Products property or the Consolidated prop-
4868 erty, did you have grievances over the amount of

money that was being paid to the hand-loading miners?

A. No, sir, I never did have a grievance over the number of years that I stayed there about the amount of money that was being paid for them. In that section they was not any scales anywhere and all those men was loading by the car because they didn't have any way to weigh it, they would measure those cars and then they would pay so much according to what the car held. The local committees did all of that, because I didn't have time to do that. I didn't have authority, in the first place.

They had a lot of grievances occur from practically all of the mines. Those mining cars were made out of lumber and they would wear out pretty often. When those miners would, those operators would repair the cars they would slip anywhere from 2 to 3 inches on each sideboard.

Well, that caused a lot of trouble, a lot of days lost whenever they would do it. The committee would call on them for more money per car and, of course, they wouldn't pay it, and then they would go home and stay home until—most of the time the operators would appeal to me to get these men back to work.

I said, "Pay them for that 2 inches you put on your carboard, I am sure they will go." That caused a lot of trouble.

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4869 CROSS EXAMINATION

By Mr. Kelly:

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4875 Q. Now, what is this term "sweethearting" that they talk about?

A. I don't know anything about any "sweetheart." I never talked to anyone about them.

Q. Don't even know what that term means in the
4876 coal mining business?

A. No, I don't want to know.

Q. You never had heard it used before?

A. Sir?

Q. You never had heard that word used?

A. I heard you people that represented these coal operators use it, and I heard the papers quote it, and that is all.

Q. Well, you did know and found out that numerous of the operators had agreed with their men on a scale at their various mines, hadn't you, which was under the national contract scale?

A. No, I did not. If I had, I would have made some attempt to correct it.

Q. Well, now, you regularly went and checked at all the mines there and talked to the miners working in the mines as to what scale they were being paid, didn't you?

A. I was at the mines regularly, I worked six days a week, and I was at all those mines.

Q. But if "sweethearting" was going on in the form of paying the employees in the mines less than the national scale contract of the workers in the mines, wouldn't they tell you about it, is that right?

A. If anyone would have brought a grievance saying he was working for less than the contract scale, I
4877 would have immediately took steps to correct it under the contract.

Q. Now, you never talked to none of the operators or they talked to you anything about at the time they were signing up the contract that they couldn't pay the scale and couldn't pay the Welfare?

A. Mr. Kelly, they never was a single operator ever questioned that contract with the exception of George Bryant and at one time in '58 George Bryant signed the contract and he says, "I don't know how long it will last, but we will try it a while."

Q. And what did you tell him?

A. I didn't tell him anything. He just made that remark to me and I already had his contract with a signature on

it, and in my possession, so I didn't tell him anything. I didn't go there to argue with them, I went to sign them on a contract.

Q. Well, what would you have done if they had refused to sign that printed form contract?

A. I would have took it back to the local union meeting.

Q. And what would have been the local union committee's duty to do?

A. I don't know what the local union would do, Mr. Kelly.

Q. Well, you swear here positively that never in
4878 any instance where you were signing or getting an operator to sign the printed form contract that you told him to pay the best wages he could as agreed upon with his men and to report the tonnage that he could afford to pay 40-cents' Welfare on?

A. I never said that and to no operator, not even no operator and I resent anyone saying that I did.

Q. You found out personally that they were not paying the wage scale and that they were not paying the full amount of the Welfare, didn't you?

A. I found out that they wasn't paying the full amount of Welfare. I never found out anything about the wage scale only they was loading by the car.

* * * * * * * * * *

4882 Q. Well, let's see then. You began, you had work stoppages that started in the summer of 1955, in August 1955, didn't you?

A. I did.

4883 Q. And maybe prior to that. And that was because of the failure to pay in full vacation?

A. Yes, sir.

Q. How many mines were affected by that?

A. All of the mines on the Tennessee Consolidated property and all of the mines on the Tennessee Products and Chemical property.

Q. Now, you are talking about the small operators?

A. Talking about the small operators.

Q. Well, what steps did you take then to undertake that forced to correct that and pay the vacation?

A. I took steps according to our contract, had the committee to take it up with them and they naturally denied them, and I talked to each and every one of them and they said that they wouldn't pay the vacation until the two big companies gave them an increase that they was already entitled to. They claimed that they was being chiseled from the two big organizations, Tennessee Products and Tennessee Consolidated.

Q. Well, when that didn't settle it, what further steps did you take?

A. The men quit work. I didn't take any.

Q. You didn't tell them to quit work?

A. Did not.

Q. Didn't tell them to strike?

4884 A. I did not.

Q. Well, when they quit working, what did they start to do, did they start picketing?

A. They didn't have to picket, nobody went to work.

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4930 HOWARD MADEWELL,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Owens:

Q. Will you state your full name and address, please?

A. Howard Madewell.

Q. What is your address?

A. Jasper, Tennessee.

Q. What is your occupation, Mr. Madewell?

A. I am a field representative for District 19.

Q. How long have you been a field representative?

A. I think it was September the 18th, 1959, whenever I went to work for District 19.

* * * * * * * * * *

4931 Q. All right. Now, what was the date you came to the Southern Tennessee area?

A. When I first came to the Southern Tennessee area was on March the 4th, I think, 1960. I stayed for about six months and then was sent to other parts of the district to work.

Q. And then did you return to Southern Tennessee?

A. Yes, sir, in 1961.

Q. Do you know what month?

A. Did I say March the 4th the other time? March the 4th the first time I come, January the 4th, I mean March the 4th is when I come back in 1961.

4932 Q. All right. Now, were you acquainted with the Allen and Garcia operations on Tennessee Products or Tennessee Consolidated's properties?

A. Yes, sir.

Q. Were you in the negotiations or the meetings leading up to the re-opening of the Coal Valley Mine?

A. Yes, sir, I was.

Q. Tell what occurred at those meetings, who was present.

A. There was me and Mr. James Riding and Waldon Shrum and James Fults, the best I can remember.

Q. Who represented the company?

A. Mr. Fitzgerald and Gene Poore was speaking for the company at that time.

Q. What arrangements were made in that meeting?

A. The arrangements was made to take the men from the Coal Valley panel list and open the Coal Valley Mine with the understanding that they would have to be some rehabilitation work done there and Mr. Ridings, of course, agreed that he would take this to the men and get their opinion on it and if they approved it he would let them know back and that's what he done and the men approved it, that he would put the machinery in the mines and do the con-

struction work at a construction rate, which was agreed upon at that time, $1.75 a hour, if I am recollecting right.

Q. You said "rehabilitation work." What do you
4933 mean by that?

A. At that time there was no track whatever in that mine for delivering supplies or taking in the men on the man trip, taking machinery in and out of the mine. This company seemed to think that that had been a bad bottleneck, and certainly it was, and they was naturally a lot of rock fell in the mines since it had been down, as it will any mines, and that all had to be cleaned up and get in machinery in the mines and ready for production of coal. Then he said they would go on to contract.

Q. Was there any time limits set that this construction rate would go on?

A. Yes, sir, it was either said, you know, 60 days to start with or eight weeks, one or the other, and I won't say which, there's not too much difference in that, but it was either eight weeks or 60 days, one or the other, and I have forgot which.

Q. Was that done?

A. That was absolutely carried out, the 60 days, and then they asked for the work, the work wasn't done, the construction work wasn't done at the end of this time due to rock falls and unforeseen things that occurred during this length of time. They asked for three weeks longer and I contacted Mr. Ridings and Mr. Ridings come down and we had a meeting of the men and the men agreed and
4934 granted that next three weeks and it went on until that three weeks was up and their work wasn't completed and they asked for two weeks more.

Mr. Fitzgerald said, "If you will, we will go on the United Mine Workers contract that day, boys, whether we have got it done or not." Said, "We have asked for two extensions." Said, "We won't be asking for ary another one." They was granted that two weeks.

Q. All right. Now, did they finally get on the UMW rate?

A. Yes, sir, they did.

Q. Then what happened?

A. Well, after they started in production of coal I thought they was getting along pretty good, I heard some of the men talking about the top being bad and the conditions being bad but after that, why, they got to disqualifying men there and got us all into disturbance and uproar and one thing and another and it was a pretty bad situation.

Q. Well, did you participate? What was done about that?

A. Well, every time that we had a stoppage I got on it as quick as I could to get the thing straightened out and get the men back to work and try to get their case processed like the contract called for.

Q. Well, was there any dispute about the training
4935 of men or was there a training program instituted?

A. Yes, sir. I presume you are talking about this memorandum of understanding now that was drawn up there, are you?

Q. Well, was there one drawn up?

A. Yes, sir.

Q. Did you participate in that?

A. I didn't help draw—I didn't draw the memorandum of understanding up but I did know about it being drawed up.

Q. I think that is already in evidence, which I think it is dated August 31, 1961.

Now, was there any grievances after that?

A. Oh, yes, sir; yes, sir.

Q. Tell about those.

A. Well, now, they would take fellers over there to train them at the mines and fellers would get cut off on the first, second or third day and they would tell me that them fellers, the boys that was trying to train them and the Joy man that they had there to train them was there

but, anyhow, that evening they would, first, second or third day would give them a cut-off slip, a disqualifying them.

Q. Then what would happen?

A. Well, sometimes it would be a strike over it.

Q. What did you do about that?

A. I would get them back to work just as quick
4936 as I could.

Q. All right. Do you remember any of the men that were cut off that were involved in this?

A. Any of them that was cut off?

Q. Yes, disqualified.

A. I remember several fellers that was cut off, Mr. Owens, I recollect three fellers that were cut off and we finally got their cases agreed to arbitrate, who was Mr. Shrum, Mr. Marshall Sweeton and Jack Long.

Q. Was there any dispute with James Brooks?

A. Yes, they cut James Brooks off.

Q. Now, when was that, the approximate date?

A. No, I wouldn't say that I can recall just exactly when that was, Mr. Owens.

Q. How about Lee Tate?

A. While we was in Coal Valley.

Q. Was there any disqualification of Lee Tate?

A. Yes, sir. We had some difficulty on Lee Tate, as I recall. Lee Tate was called and sent for an examination and he was rejected by the doctor, the doctor told him that he was on the border line.

Well, he came back and he went to Dr. Cecil Newell, so he said, and Cecil Newell said—not Cecil Newell but the doctor up at Palmer, now, what is his name, Huline, said Huline said he doubted that he had any high blood pressure.
4937 So we got Mr. Fitzgerald to agree, since the thing like that had happened, one doctor said he had high blood pressure and another one said that he couldn't attach any high blood pressure, to send him to what was known to be a better doctor, who was Dr. Cecil Newell, I think it was where we sent him to, and Cecil Newell found that he didn't

have no high blood pressure and give him a piece of paper stating that or okay that he didn't have no blood pressure, high blood pressure, and he come back and asked for another chance and they didn't give him no chance at it.

Somehow or another this feller put up a one-man picket line one morning and stopped the whole mines out there.

Q. Did you get them back to work or did anybody get them back to work?

A. Absolutely did. I went as quick as I heard about it and I went to Lee Tate. I talked to him, oh, maybe two or three hours, showed him where he wasn't a doing hisself nor his local union or nobody else any good by doing a thing like that and asked him to refrain from that picketing and he agreed to do so.

Q. What do you mean by "a one-man picket line"?

A. Well, that is just where one man just goes out there and everybody stops and goes back home.

Q. All right. Did an International commission come in to investigate?

4938 A. We had about two different International commissions in on them particular things.

Q. Do you remember the first one?

A. The first one was Mr. Joe Yablonski and Ewing Watt.

Q. (Spelling) W-a-t-t?

A. Yes, sir.

Q. All right. Did you meet with the company, the commission and yourself?

A. Yes, sir, we did.

Q. Did you have an inspection of the mine?

A. Did I do what, Mr. Owens?

Q. Did you go with an inspection of the mines?

A. I did with the request of the commission and the permission of Ridings.

Q. All right. Then what happened, what occurred?

A. Well, we went on on the day shift.

Q. By the way, what was the purpose of going in the mine?

A. Well, now, the company was a claiming they had good conditions in this mine and it was the men's fault that they wasn't getting no more coal than what they was getting. The men claimed that they had bad conditions in there and dangerous conditions and the commission wanted to see and I did, too, personally myself to see with my own
4939 eyes what was a going on in there and since I had that opportunity to go in I was very anxious to go in and look.

Q. All right. Now, you tell me about it. Who went in with you and what occurred?

A. I had been in several mines, Mr. Owens, and I have never been in the mines yet that they was a trying to get coal out and working in under any such conditions as they was working in that mine.

Q. Will you describe it?

A. Such as dust, dust was at least, I say, an inch all over the place, cables laying all over the roadway which would explode and had a big explosion at that mine, the top was working all over the place, some of the worst top I ever seen men work under, they had all the room necks, all their aisleways and everything gobbed up with rock which had fell in that mine and it was very easy for me to tell why if they had some of the best Joy men that had ever run Joys could not get coal in conditions like that.

Q. Do you know the approximate date of this time you were in there?

A. No, but it was some time along about the time that that memorandum of understanding was drawed up, just shortly before that a few days.

Q. Well, was the commission in there at this time?

A. Yes, sir, they sure was.

4940 Q. It was whenever the commission first came down to that area, was it?

A. I think that was their first trip down there.

Q. All right. Now, you said the top was "working." What do you mean by that?

A. I mean the top was rotten, Mr. Owens, and they was bolting that top and the top was so rotten that bolts would not hold it and I think that that proved its ownself enough of it fell and I understand that one foreman got trapped there one day and they got two men hurt real bad there in that mine and they had one feller that got a total disability on rock dust after that time.

Q. All right.

A. They had their air hoses all over the roadway there and shuttle cars running over them and one thing and another, why, they ought to have known that it would bust their hoses, looks to me like.

Q. All right. Who was with you besides the International commission, was there anybody?

A. Mr. Fitzgerald went in that night with us to the end of the belt line, that is where he stopped, didn't go no further than the end of the belt line, the tailgate, they call it.

Q. All right. After you get to the end of the belt line, where did you go?

4941 A. Well, we went on up in the working places where they was working, where this bad top was I am talking about.

Q. All right. Were you in there on more than one shift?

A. I went in on the day shift one evening, we came back out that evening and that night we went back in on the night shift.

Q. All right. When you got to the face, what did you see?

A. When we got to the face?

Q. Yes.

A. I was a watching the machine run and I watched Waldon Shrum. Now, he was cutting coal with one of the machines and they had actually bragged on Waldon as one of the—at one particular time as I remember a running this machine very fast, now, Waldon had run a machine but not exactly that type.

Q. What kind of machine was it, a loading machine you are talking about?

A. No, sir, it was a cutting machine. They bragged on him and was well pleased with Mr. Shrum, the way he was cutting coal, and I timed him that night a cutting in a place and he was some 12 or 14 minutes, something or another near that cutting that place.

After he got that place cut, looked to me like it
4942 was another handicap and Mr. Shrum had to drill that place before he moved on to his next place to cut.

Q. Was that a normal procedure?

A. Sir?

Q. Is that a normal procedure to have—

A. (Interposing) Not in any mines that I ever had any experience with, it was not.

Q. Who usually does the drilling?

A. Well, they usually have a drill man there to have that drilling done and ready to go when the machine gets done cutting, move into the next place or start cutting on the next place. You can't cut a place and sit there and help drill the place and do other work and the place right over here and make any time that way, anybody knows that.

Q. All right. Now, was there any foreman with him?

A. Was there any foreman?

Q. Yes.

A. Yes, sir.

Q. Who was there?

A. Mr. Bradley was in there.

Q. What did he do?

A. Well, now, Mr. Bradley sit back on the job and Shrum come out of this place on the right-hand side and went down in a straight and he cut a place hisself that night without him a knowing, Mr. Shrum or anybody else,
4943 I timed him on that myself because he had told me how long he had run one of them kind of machines and how much coal he had loaded with the Joy and one

thing and another and I wanted to see how well he done that, so, he was some three to five minutes longer a cutting that place, which I considered bigger, a better place to cut than the one Mr. Shrum was in because Mr. Shrum's place was sort of a sideways place and he was having a little difficulty holding the back of his machine in position where Mr. Raymond Bradley didn't have that in the place that he cut.

Q. Did you do any—

A. (Interposing) The cut place Mr. Bradley cut was one of the best places I seen in there that night.

Q. Did you do any work in there that night?

A. I did.

Q. What did you do?

A. Well, now, I run a Joy a long time and just to tell you the truth about it I like the feel of one, like to run one. I asked Lee Tate if he minded me a cleaning up a place for him and that was the place that Raymond Bradley cut hisself and shot it down and he said he sure didn't, he said he was hot and needed a little rest anyway, and he was about a hot a feller as I ever seen in the mines and I cleaned that place up for him while he was resting. He would take the Joy and go over in the next place and started
4944 working in it and after a little bit, why, I went over there on that side, me and Joe Yablonski and Ewing Watt stayed out here at the main entry, however, the shuttle car, I can't recall just exactly whether it had just come in under it or went out, anyhow, we heard something or another fall and we went out there and right at the entrance of that neck there was a rock fell that would have weighed at least one ton or maybe more. They had to bust that rock up and take a shuttle car and scoot it over out of that roadway before they could haul any more coal.

Q. Did you observe Lee Tate working?

A. Lee Tate?

Q. Yes.

A. Yes, sir, I seen Lee Tate a running the Joy.

Q. What did you think of his performance?

A. I'd say that Lee Tate was doing an excellent job fo the length of time that he had been a running that Joy.

Q. All right. Now, subsequent to that time, you say Waldon Shrum, and you named several others, Marshall Sweeton and the fellows that had the grievance, do you recall what time their grievance arose?

A. From the Coal Valley Mine?

Q. Yes.

A. It was from the Coal Valley Mine where they
4945 was *was* working when this grievance came up.

Q. Do you know the date?

A. No, sir, I can't recall no dates right now.

Q. Do you recall the month?

A. I don't think I can. It was some time—

Q. (Interposing) What was Mr. Shrum's grievance?

A. Mr. Shrum had been cut off from the machine.

Q. Was cut off and put on the panel or what was it?

A. He was off for a short time, I don't know exactly how long he was off, and then they put him back on the bolting roof bolting.

Q. Does that carry a lower rate?

A. It pays the lower rate, something or another close to $2, I guess.

Q. All right. Now, do you know how long it took to get an umpire to decide those grievances?

A. Oh, it took a—time and time we tried to get them to agree on an umpire and they never would agree on nothing. They submitted some and we submitted some and they wouldn't agree.

Now, they submitted three fellers that I remember, I guess it stands in the record, somebody should have it, was Mr. Bill Ables, who was a company lawyer, Mr. Justin Harwood, who was a company lawyer, and they also sub-
mitted Judge Sam Polk Raulston, at Jasper, who at
4946 that time had a case, I think, against the Welfare

Fund for some individual, a feller maybe that was—that he was handling a case for.

Q. Was he a judge at that time?

A. I don't think he was, Willard, I am pretty sure that he wasn't a judge at that time.

Q. Did they suggest any other names that you recall?

A. Well, not at that time, not at that time, no, I don't remember anybody else that they did. I believe, too, that they submitted some feller up in Jellico that I am not familiar with, I don't know a thing about him. I don't remember what his name was.

Q. Was that Tramel?

A. That sounds familiar, I believe I have heard that name, that could have been who that was.

Q. All right. Was there ever an agreement then on an umpire?

A. Oh, yeah. All this stuff kept going on and on and we could never agree on nothing, we would think we would agree on it and get the thing straightened and we'd go back and they'd cut off another man the next day or something or another like that and I got on the boys to not be too hasty about trying to do anything about it, we are going to try to referee these cases, take your case up and handle it under the contract and they were telling me, "Now, what is the use of trying to handle a case under the contract
4947 grievance clause when you can't even get these operators to submit nobody unless it's a company lawyer?"

They said, "We could never get back to work that way."

Finally Mr. Titler and Carson Hibbitts come down here.

Q. Is this another commission that was appointed?

A. This is another commission that was sent in by the International Union to try to help make the thing go.

Now, if everybody was in the mine I was, we certainly wanted to make a go of that big mine. About the first thing that Mr. Titler said was, "Now, the first things come first

and we should agree here on a referee from somewhere to referee these cases."

Now, I might call it referee or umpire is what most of the people called it. He said, "I think we ought to attend to that now."

Of course, Mr. Titler had discovered that had been one of the problems there that I was running into getting the men back to work when they would have a little strike or something or another, that's what they was saying to me.

Well, Mr. Fitzgerald said, "We will just submit you Mr. Lewis, John L. Lewis."

Well, now, of course, Mr. Titler said, "We will
4948 accept that."

He accepted Mr. Lewis and Mr. Lewis rejected umpiring the case for him. They submitted another man some time later, I don't know, after they found out Mr. Lewis wouldn't umpire the case for him and they submitted Tom Kennedy and some time after that Tom Kennedy made the decision on it.

Q. Was that decision ever put into effect?

A. No, sir, it was not.

Q. Do you recall what the decision was?

A. Yes, sir, the decision was to put these fellers back on the job and pay them for all time lost.

Q. Was that ever done?

A. No, sir.

Q. All right. Now, do you recall who the union submitted any of the names that the union submitted as umpires?

A. Now, I think this to be true, they submitted a fellow by the name of Finley, who lived in and around Jellico, and a feller by the name maybe of Grady O'Hara and they was one case down there, I am not saying that this is the case now, it could have been another one, we had trouble on agreeing on two different referees there but one time they submitted a professor of the University of Tennessee who I had never heard of myself, I didn't know him, I didn't
4949 know whether these fellers knew him, I don't know

whether he would have accepted even if it would have got to him or not.

Q. All right. Do you know a man by the name of Pete Collins?

A. Who?

Q. Pete Collins.

A. Yes, I remember Pete Collins.

Q. Who was Pete Collins?

A. Pete Collins was a man that works for the Joy Manufacturing Company and where they are putting in new equipment he comes in and helps to accquaint the men with the new equipment, training them, help qualify them and so forth.

Q. Did you discuss this problem with Mr. Collins?

A. I did.

Q. All right. What was that conversation?

A. I met Mr. Collins in Jasper one evening and we had been having all this trouble and the men telling me one thing and the company telling me another and I was thinking to myself, "I will ask Mr. Collins what the problem is out there, if we have a problem out there and I am misinformed about it then I will certainly pass it on to our people at the District Office."

Pete Collins told me, he said he had never run into nothing like that.

Mr. Rowntree: Object to this, your Honor.

4950 Mr. Owens: Your Honor, they went into this about Pete Collins' statement in their evidence, as a matter of fact, I think they put in a letter about Pete Collins' statement as an exhibit in Mr. Fitzgerald's testimony. I think it was over our objection, too.

Now, if Mr. Collins is a representative of the company, he was down there hired by the Allen and Garcia Company and went down there and worked for them I think the conversations about the operation of this equipment certainly is competent.

The Court: I don't recall the matter being objected to previously. I believe I will sustain the objection.

Mr. Owens: All right. May we make an offer of proof then on that and we will check into the exhibit that we are referring to?

Q. All right. Tell about this conversation that you had with Mr. Collins.

A. With Mr. Pete Collins?

Q. Yes.

A. And I said, "Pete, I want to know the facts." I told him who I was the first time I had met him and I said, "I want to know the facts about this. You are out there in that mines where them men are being trained. What is the problem out there?"

4951 Well, he said, "I just be frank and answer it in a very few words." He said, "About the time that I get a man acquainted with a piece of machinery and I think he is going to make me a good man on it," he said, "they will cut him off." And he said, "I have been to a lot of places and I have not run up against nothing like this before." And he said, "I have just about fooled with it as long as I am going to."

Mr. Owens: Your Honor, I think that this evidence is also competent to show the state of mind of Mr. Madewell as to his actions and as it reflects on his actions during this period of time.

The Court: Well, I believe the objection should be sustained. Of course, he can tell what he did or anything as a result of any conversation he had with Mr. Collins.

Mr. Owens: I think it explains, of course, all of his actions in regard to these grievances and getting people back to work.

All right. That concludes the offer of proof.

The Court: All right.

Q. All right. Now, did the Coal Valley Mine subsequently close down?

A. Yes, sir.

Q. Do you recall when that was?

A. Well, the best I recall it must have been along
4952 about in June.

Q. Of 1960?

A. One.

Q. Sixty-one or '2?

A. Sixty-two, '62.

Q. All right. Then what happened?

A. Mr. Fitzgerald notified me that he would like for Mr. Ridings to come down and he said he had a very serious thing to talk over with him at the Coal Valley Mines, that the Coal Valley Mines had become so bad that it was impossible to do any more mining in it with that machinery and he had to close it down.

I notified Mr. Ridings and the best I remember Mr. Ridings and Mr. Turnblazer came down. We met with Mr. Fitzgerald, I think maybe Mr. Poore was there that morning, I wouldn't say for sure. He explained the conditions of the mines that he had to shut it down and everything and he said, "Now, I don't know whether Tennessee Consolidated Coal Company is going to be willing to open up the next mine or not in Grays Creek."

But he said, "I have got to go to Nashville. I want you people to think it over and talk to your people about it and let me know." I took it that they had to meet some of the stockholders or something or another of the company to get the permission to open the other mine.

4953 "Now, if they are willing to give us another construction rate on moving this mine equipment over to this mine, building the tipple, getting the mines in production," he said, "I will certainly pass that on to the people in Nashville." And he give Mr. Ridings the telephone number where to call him at at Nashville and let him know what the reply was of the men.

He met with the men and the men went along with him. He said, "We will help just like we did in the other mines."

Q. All right. Was there any construction rate th made?

A. It was agreed at $1.75 an hour again.

Q. All right. How about the time that this was to cove

A. Mr. Owens, if I am not mistaken, this here was set a footage limit instead of a time limit for some reason another, I think they figured that the top would be bett and they could judge it better that way than they could b setting a time limit on it.

Q. Do you remember what that was?

A. No, but I believe it was around 300 feet.

Q. What do you mean, when they got 300 feet?

A. Under the ground.

Q. Then what was to occur?

4954 A. Well, they got along mighty good, I thought.

Q. Well, I mean after they got the 300 feet wha was to happen?

A. Well, when we got 300 feet they was supposed to pu the contract and the memorandum of understanding in ful force and effect.

Q. All right. Then what happened when they got to 30 feet?

A. When they got 300 feet in I think that they did pu the mines on the contract. Mr. Fitzgerald told me at tha time that he was not going to recognize the memorandum of understanding or the panel list any more.

Q. Did you have any further meetings about that?

A. Yes, sir.

Q. Was there any grievances about that?

A. Well, now, we had several grievances on it, fellers talking about it, but we had one feller that I remember tha felt like that they bypassed him on that whose name was Pascal Scissom, another one of them there one-man picke lines. He got out there and put a one-man picket line up on what they call Dogwood Flat.

Q. What happened? Do you remember when this was?

A. Now, Mr. Owens, I think that this must have undoubtedly been some time in September.

Q. Well, had you had meetings previous to that
4955 with Mr. Fitzgerald?

A. We had so many meetings with Mr. Fitzgerald I can't recall just exactly what meetings.

Q. Well, was there another commission appointed to come down?

A. I think that Carson Hibbetts and George Titler came down here, yes, sir, after that, they sure did, I remember.

Q. What position did Mr. Fitzgerald take in regard to the grievance machinery?

A. He met with Mr. Fitzgerald and Mr. Gene Poore and myself, Carson Hibbetts, Mr. Titler and Mr. Ridings at the Spangler Motel at Jasper and they didn't much more than get sit down and Mr. Ridings said to Mr. Fitzgerald, said, "Now, Mr. Fitzgerald," said "we have some kind of a misunderstanding on our working arrangement." He said, "At your No. 11 mine." And he said, "I think that we should arrive at some understanding and get the thing straightened out and everybody get to going good."

Mr. Fitzgerald said, "We will not talk to you about nobody at all except the men that is now a working." I believe he stated about 20 or 25 men that was working at the Grays Creek No. 11 mines and he said, "If you are not satisfied with that," he said, "we won't arbitrate and leave it to one man." He said, "We will meet you in court
4956 and let twelve men decide it."

Q. Then what happened?

A. Well, the meeting broke up at that time. After that Mr. Ridings and Mr. Turnblazer went to Nashville and met with, I understand, Paul Callis.

Q. Well, before we get to that, when was this meeting that you had in the Spangler Motel, do you remember the month that that was in?

A. I think maybe it might have been in September.

Q. All right. Do you know if the contract was cancele at that time?

A. The contract was in cancellation but I don't thin that the contract was up until October the 22nd or some where around there.

Q. Do you know if the notice of cancellation, the 60-da notice of cancellation, had been given at that time?

A. I do.

Q. At the time you had the meeting in the Spangle Motel?

A. I knowed that the 60-day notice had been given, I wa informed that they had given 60 days notice of terminatio of the contract.

Q. I am asking was the meeting before — the meetin in the Spangler Motel before the 60-day notice or after th 60-day notice, if you can remember?

4957 A. To tell you the truth about it, I just couldn' say for certain now which.

Q. All right. Now, you mentioned a one-man picket lin of Pascal Scissom. What did you do about that?

A. After working with him all day there I got him t agree, along with Edwin Ross and finally they had to g get the president of the local, a fellow by the name of Her bert Tate, to go with us and talk to him and he agreed t refrain from picketing. He was another one of them fellow that says it does no good to arbitrate a case.

Q. How long was the mine shut down due to this?

A. Oh, it was only down one day.

Q. All right. Was there any other work stoppage a Grays Creek No. 11 Mine?

A. I only recall two work stoppages at the Grays Creek No. 11 Mine and Pascal Scissom's case was one of them and the other one was brought around by a feller that was not on the panel list to work over there, a feller by the name of J. W. Sanders, the company told the men that they had hired him for a boss. This man told the men that he hired

in to work at anything that he wanted to do or anything the bosses wanted him to do, that he was going to work there if anybody did. So that caused a short stoppage.

Q. Do you recall how long that was?

A. That was about three days, the best I can
4958 remember.

Q. What did you do about that?

A. Well, we went to work on the men trying to get them back in there in that No. 11 Mines as quick as we could. I had to call Mr. Ridings to absolutely keep that No. 11 Mines a working.

Q. All right. Was there any other mines being started at this time in that area?

A. They was already one mine had been opened there in Grays Creek, which was a fellow by the name of W. H. Crabtree had opened it and signed a contract for it.

Q. Do you know when he opened it?

A. No, but it was while the Coal Valley Mines was still going.

Q. All right.

A. And Mr. Crabtree signed the contract.

Q. You talking about a UMW contract?

A. Yes, sir, United Mine Workers contract and there in Palmer one evening and I said, "Now, Mr. Crabtree," I said, "you know the understanding on the mines over there, don't you?"

He said, "I think I do."

I said, "Maybe we had better go in here and talk to Mr. Fitzgerald about it and he can explain it to you then there won't be no misunderstanding."

So we went in and talked to Mr. Fitzgerald and
4959 Mr. Fitzgerald told Crabtree this, he said, "Now, you have to take your men from this here panel list." He said, "It's agreed to do that. That mines or any other mines that is opened on Tennessee Consolidated Coal Company properties but, he said, "I want this understanding right

now while Howard is standing here," and I had some of the committee, too, "that if you have a man over there in that mine or any of the other little mines that might be opened, I have the right to take that man out of that mine and put him in No. 11 but you do not have a right to take a man out of No. 11 to put in your mine. I could have a man trained, I don't want my trained men took away from me."

Q. All right. Now, how long did Mr. Crabtree operate?

A. Well, he didn't operate too long until they closed him down and told him to wait. He told me, now, this is what he told me, if I am allowed to state that.

Mr. Rowntree: Well, I object to this, your Honor, on hearsay.

Mr. Owens: All right.

Q. Do you know when he ceased operation of that mine?

A. When the company told him to cease operation?

Q. Yes. When was that?

A. I guess that was some time about in November,
4960 I guess.

Q. November of '61?

A. Sixty-two, I guess.

Q. Well, did he operate up there during the time that Allen and Garcia was operating Grays Creek No. 11?

A. Yes, I think that he operated over there some while the construction work was going on and while they was running coal, too, I think he operated over there.

Q. All right. Now, were there other mines opened up during that period of time?

A. Yes, they started several mines being opened up over there.

Q. All right. Were they under contract?

A. No, sir.

Q. All right. What about that?

A. And they said that they was not going to take the men from any Coal Valley panel list.

Q. Do you know who operated those mines?

A. I know who was opening some of them at that time. They was Mr. Howard Higgins was opening one in there, I understand, and a feller by the name of Paul Hatfield was opening one and I think Willis Flynn was opening one.

Q. Do you know whether this mine or whether those mines were operated by anybody else at that time?

A. I don't exactly get your question, Mr. Owens.

4961 Q. Well, was Willis Flynn, was Howard Higgins and Hatfield, were their mines, their coal company operating or was it some other coal company that was operating it?

A. Well, Howard Higgins was operating his mine in the Pocket at that time and so was Flynn.

Q. I am talking about in the Grays Creek area now, the new mines they were opening up. Did you know at that time whether they owned those coal mines or was it owned by somebody else?

A. Oh, they was owned by Tennessee Consolidated Coal Company, the coal in the mines was that they was leasing.

Q. Well, do you know if the Grundy Mining Company was operating those mines?

A. Well, the Grundy Mining Company is nothing but Tennessee Consolidated Coal Company to start with with me, Willard.

Q. All right. Was there any difficulty about the opening of those mines, say in August or September, 1962?

A. Well, all I know that they was in there opening them up and said they was not going to take the men from no panel list.

Q. Then what happened?

A. Well, they had some picketing going on up there.

Q. All right. Now, where was the picketing?

A. They had some picketing at the Dogwood Flat

4962 Road, that's where the road turns off to go to Grays Creek off of the Pocket Road.

Q. All right. Did you do anything about that?

A. Well, I was up there occasionally back in October.

Q. What would you go up there for?

A. Because I was instructed to by Mr. Turnblazer to g up there and see that they was not no violence and at tha time we had some injunctions against us and to see tha no court order or no injunction was violated.

Q. Well, did this picket line interfere with the operatio of Grays Creek No. 11 Mine?

A. It did not. This picket line wasn't on the Grays Creek No. 11 Mine, it was on the small mines that was trying t open up there contrary to what had been agreed upon b the big companies before that.

Q. All right. While you were there did you ever tal to Mr. Callis?

A. No, sir, I never had occasion to talk to Mr. Callis a this place.

Q. All right. Did you see anybody on that picket lin with a bullwhip?

A. No, sir, I did not. Now, I have heard of that before Now, here is what I did see one morning, and I have always took it for granted and I am honest about this, too, they was an old truck broke down there one morning that
4963 some individual — wasn't a coal company truck, I don't think — that had some coal on his truck and it brown down there and there was an old fan belt laying there in the middle of the road and Pack Scissom picked that whip — that old fan belt up and used it just like a whip there knocking gravels off the edge of the road and I might have done it myself if I had seen it laying there and not thinking, of course, I wouldn't have done it and thought somebody was going to accuse it of being a bullwhip.

Q. Well, all right. Now, was there, subsequent to that time was there a dispute or a strike at the Grays Creek No. 11 Mine?

A. No, sir.

Q. Before the contract ran out?

A. There was some confusion there among the men whether there was a contract there or not. Me and Edwin Ross went in the office and asked Mr. Fitzgerald if he still considered Grays Creek No. 11 under contract and he said, "I most certainly do."

Q. What was the confusion, what caused the confusion?

A. Well, some of them said that Raymond Bradley told them in the mines there that that mines wasn't under contract.

Q. Who did they say was operating it then?

1964 A. In what part?

Q. Well, was there any confusion as to whether Allen and Garcia was operating the mine or the Grundy Mining Company was operating?

A. Well, now, it became a question there, Willard, along about in October some time, I think it was, I believe that was the first I heard about it that Grundy Mining Company was taking over the operation of the Grays Creek No. 11 Mine.

Q. Well, was there a work stoppage at that time?

A. Well, Willard, I don't think that they lost any time there on that.

Q. All right. Now, what happened then after the contract ran out, the Mine Workers contract ran out in October, the latter part of October?

A. Well, Mr. Ridings and Turnblazer, I think, went to Nashville and met with Mr. Callis, I understand, and worked out some kind of an agreement with them to keep that No. 11 mines in operation while some kind of negotiation was going on to see if they couldn't work out a contract and get things a going like it should be and the men went along with that and worked until they refused to cut the dues after agreeing to, provided the men would sign an authorization for them to cut them.

Q. Let me back up to September of '62 when they

4965 had this picket line that you have described on th other mines that were opening up other than Gray Creek No. 11.

Did you see Walter Frizzell on those picket lines or wa he around there?

A. No, sir, I never did see Walter Frizzell up there.

Q. Were you ever with Ambrose McGuirk on the picke line to prevent Walter Frizzell going to work?

A. I have seen Ambrose McGuirk up there at times bu I never did see Ambrose McGuirk keep Walter Frizzell from going to work.

Q. Did you set up this picket line?

A. No, sir.

Q. Authorize it?

A. No, sir, I know nothing about it until after it was already up there.

Q. All right. Now, when they didn't check off the dues then tell us about what happened? What did you do about that?

A. There just wasn't much I could do about that. The dues business, I went in the office out there and I asked them about it. First, though I took this authorization in the office that they had requested and give it to the bookkeeper and he said he would give it to the proper authorities and after that I found out that the proper authorities he give it to refused to cut the dues.

4966 Q. I hand you a paper and ask you if you can identify that?

A. This looks to me like it is.

Q. What is that?

A. That's an authorization to cut these men's dues. These men wished for their dues to be cut while these negotiations we have been talking about was going on.

Mr. Owens: I'd like to have that marked as an exhibit.

The Court: Exhibit 397.

Mr. Rowntree: Is there a date on that?

Mr. Owens: I will show it to you.

(The authorization referred to above was marked D397 and received in evidence.)

Mr. Owens: All right. This is a document dated December 1, 1962.

"To Grundy Mining Company and Tennessee Consolidated Coal Company."

It states, "We, the undersigned, do hereby authorize and request you on each pay day hereafter to deduct from our wages (or earnings) all the amounts of money due to the United Mine Workers of America by us as membership dues (including initiation fees and assessments), and to promptly transmit and deliver the same to its duly authorized representative, who is Mr. Albert Pass, Secretary-
4967 Treasurer, District No. 19, United Mine Workers of America, Box 116, Middlesboro, Kentucky. This assignment, authorization and directive shall be irrevocable for the period of one year and we agree and direct that this assignment, authorization, and direction shall be automatically renewed and shall be irrevocable for successive periods of one year unless written notice is given by us to you and the union not more than 20 days, or not less than 10 days, prior to the expiration of each period of one year."

There is a list of names signed to this.

Q. Do you recognize those names that are signed there?

A. Yes, sir.

Q. Are those employees of the Grays Creek No. 11 Mine at that time?

A. Yes, sir, I'd say they are.

Q. Now, did you submit that to the company?

A. I gave this here to the bookkeeper at the Palmer office, a feller by the name of Dan Toni and he said he would see that it got to the proper authorities.

Mr. Owens: I ask that that be admitted in evidence.

A. Now, I would like to go a little bit further, Mr. Owen, if I am permitted on this dues question.

Q. What?

4968 A. Now, this dues question, not only on this here No. 11 mine, but it was agreed between Mr. Ables, I think, and Mr. Turnblazer for these other mines, that these other mines should have authorizations signed, too. They had headed up these here papers, Mr. Turnblazer did, and sent them down to me and Mr. Ables called to me one morning and asked me if I had them authorizations that they had agreed to head up and I said, "I have got them." And he said, "I wish you would get them up here to me. We are having a meeting tonight." And he said, "I know it's going to be a hard job for you to get these around to all of these mines and get the signers on them in time for their dues to be cut this month." And he said, "If you would bring them up here to me we are having a meeting tonight." And he said, "I will give them to the operators and have them operators to take them to the mines and present them to the men and get the men to sign them theirselves." And they said, "They can bring them back here." And he said, "I will return them to you or they can mail them back to you, whichever one they wish to do."

And that was done, too.

Q. Then what happened after the end of the month of December?

A. They found out that their dues wasn't cut, they refused to cut them.

4969 Q. Then what happened?

A. The men came out on strike.

Q. All right. Did you authorize them to come out on strike?

A. No, sir, I didn't.

* * * * * * * * * *

Q. Was there picketing of that mine subsequent to that?

A. After the 26th?

Q. Yes.

A. They tell me there was.

Q. Were you ever on that picket line?

A. No, sir, I was not.

Q. Were you ever near the picket line?

A. No, sir.

Q. Did you ever drive by in the middle of the day or the end of the day and then have all of the pickets follow you into Palmer?

A. No, sir, I did not. The pickets just went there and was there, the way I understand it, a short time of the morning and then they left and went home.

Q. Why didn't you go on the picket line?

A. I had been advised by Mr. Turnblazer and Mr. Ridings both that if I was up there on that mountain around that picket line or anywheres near and something or another was to happen it would certainly be laid on me and I might be in trouble and I was actually afraid that if I got up there that I would get into the same thing that I got into one time before that when Mr. Human called me and told me if I would go up on the mountain he had understood, the men told him if I would go up on the mountain and talk to them that they would remove their picket line.

4970

Q. You are talking about Mister who?

A. Mr. Howard Human.

Q. This was the Tennessee Products man?

A. Yes, sir.

Mr. Rowntree: If your Honor please, we object to that. This gentleman is now deceased. We object to the hearsay.

The Court: Well, as I understand, the witness is proposing to digress really from the matter upon which he was testifying to about another instance which was a part of the background as being the reason he didn't go up there in December of 1962.

The Witness: That's right.

Mr. Combs: That's right.

A. Mr. Human told me that the men told him that if I would come up there and tell them that they would remove that picket line. I said, "If that's the case, Mr. Human, I will certainly move it this morning, early too, if it's there."

4971

And I went up there and while I was up there Mr. Human passed going up the mountain. I was there talking to the men and it was either the next day or the next, one or the other, that I had a paper served on me for contempt.

Q. For doing what?

A. For being there talking to them men, I reckon, in contempt. There was a state injunction which was issued by Mr. Keel, I think, Judge Keel.

Q. All right. Did you sign to membership a man named Wayland Green and a man named Buddy Layne?

A. Yes, sir, now, I certainly signed Wayland Lee Green. Now, there's two of them Layne boys that you are asking about there. I think one of them is named Billy Conn and the other is Buddy Deane, them boys was both signed at the same time, Ernest Stults signed one of them, who is a fieldworker, and I signed the other one. I would have to look at the card before I could say which one that I signed and which one Ernest signed.

Q. All right. Now, let's take Wayland Green. Did you sign Wayland Green to membership?

A. I did.

Q. Where did this take place?

A. Well, Wayland Lee Green signed the membership card at my house at Jasper, Tennessee.

4972

Q. Do you know the date?

A. Yes, sir, I do.

Q. What was the date?

A. It was on January the 30th, 1962.

Q. January the 30th of 1962?

A. Yes, sir.

Q. Was a strike going on at Grays Creek No. 11 at this time?

A. I said '62, I think that was '63.

Q. Was that after the Grays Creek No. 11 was out on strike?

A. Yes, sir, it was. It was '63.

Q. All right. Now, about the Layne boy, the Layne brothers, where were they?

A. The Layne boys were signed the very next day. Now, let me explain this here Green boy first, if I may.

Q. All right.

A. Now, this Green boy came to my house at Jasper along with his daddy and his half uncle and come to my house and said, "If you still have the dispensation on that I want to sign membership in the United Mine Workers."

And I said, "How come you to take a notion?"

He said, "My daddy and my Uncle Bill here told me that I should sign membership with the United Mine
4973 Workers and not be trying to work out there any more until that thing is settled." He said, "I knew that they knowed better since they are older and more experienced than I am."

So that is why Wayland Lee Green said he came to my house to sign that night.

Q. All right.

A. Then the next day, on January the 31st, Wayland Lee Green came to me and them two boys with him and he said, "If that dispensation is on," he said, "I have got you two more that wants to sign."

And I said, "All right."

I signed one of them boys in there and they signed the other, and I don't know, I don't know which one right now that I signed or which one it was he signed, but we signed the two boys up right there.

Q. Where were you at that time?

A. We was at Floyd Benson's home up above Whitwell.

Q. Did you tell them that they would get $25 a week if they respected the picket line that was there?

A. No, sir. I didn't tell them that they would even get anything. They asked me something or another about that and I said, "Now boys, it's like this, they have a relief committee set up at each one of these locals. If they find and think that you are eligible they will turn your name in to the District and if they find you are eligible you
4974 will get probably what the rest have, you probably will get what the rest of them does," which was $25 a week is what they was getting and it was all that was ever promised to anybody.

Q. Well, what was the eligibility requirement?

A. Well, they had to be, it had to be a man that was considered in distress and in need and had no income, such as unemployment and so forth.

Q. All right. Now, Mr. Madewell, there has been testimony of considerable violence that occurred in '63 and I believe '64. Did you have any difficulty in that regard?

A. You mean did anything happen to me?

Q. Yes.

A. I had a few accidents at my house in 1964.

Q. What was that?

A. Somebody dynamited my house.

Q. What did it do to your house?

A. Well, it just tore it all to pieces and two cars, too, ran around close to $5,000 damage.

Q. Was anybody injured?

A. No, sir.

Q. Were you present at the time?

A. I was in the bed asleep when the dynamite went off.

Q. Was anybody else there?

A. Yes, sir, my wife and my daughter that lived
4975 there with me and my daughter from Nashville and her two kids was there.

Q. Do you know who dynamited your house?

A. No, sir, I don't, I sure wished I did know who done it.

Q. Do you still have or did you post a bond?

A. I posted a reward and the reward still stands good for the arrest and the conviction of the person or persons that dynamited my house.

Q. What date was your house dynamited?

A. Sir?

Q. What date did this dynamiting take place?

A. That was on September the 18th, 1964.

Q. All right. Now, how many local unions are in this area or were in that area?

A. At this time I have six and I think six is what I had at that time. I picked up one charter, I think that was before that.

Q. Did anything happen to the local union hall?

A. Oh, yes. We had four local union halls burned up there in the early part in '62, it was, I think that them local union hall were burned around the last of June or in July.

Q. Has there been any other dynamiting or burning or shooting in that area that you know of?

4976 A. Yes, sir, I have seen quite a bit of it, Mr Owens.

Q. What do you mean by that?

A. Well, I have seen it at Whitwell, I have seen cars shot into, Scott Terry's car and Mr. Oscar Henry's car, Bill Sullivan at Cartwright, somebody put some dynamite off at his barn killed some of his hogs, I never went and seen the hogs but I know it happened.

Q. Well, did you see any of this other shooting that you are talking about or are you saying that you saw the automobile?

A. I seen the holes that was all in the car, was all I seen, is the reason what I know it had been shot.

Q. You don't know who did that?

A. No, sir, I don't.

Q. All right. Anything else that you know?

A. Yes, sir. I can come back and I can go on th mountain and I can say that Mr. Riley Sitz' Service Statio up there, I passed there on occasion and I seen where som feller looked like had dynamited that service station, o below there was Griffith's store and had an awful explosio put off and go on out the road a little further you find Mr. Kilgore's place had been dynamited, I think Mr. Lo Caldwell on the left of the road, just as you turn into th Pocket, had some dynamite throwed out on him, and
4977 you can go out into Palmer and you can see a grea damage that has been done out there by fire and dynamite and so forth.

Q. All right. Now, has there been any shootings tha you know of?

A. Well, this here Scott Terry's car has been shot, Willard, and I have heard of other shooting but I don't—I know one man got killed up there, was shot and killed.

Q. Who is that you are talking about?

A. Another feller was shot and killed.

Q. Who was shot and killed that you are talking about?

A. I heard that Leonard Layne was shot and killed out there and Mr. Aaron Presnell was shot and killed out there, Waldon Shrum's home, they was a feller that got killed there.

Q. All right. Was Waldon Shrum shot?

A. Yes, sir, Waldon Shrum got shot in the shoulder.

Q. Was his automobile or truck shot into?

A. I seen Waldon Shrum's automobile, I mean his pickup truck at one time when the whole back glass was shot out of it, shot up pretty bad.

Q. Do you know who did these shootings or dynamitings or any of them?

A. I don't know a thing in the world, Willard, only what I have been told. Now, on this here dynamiting, I
4978 certainly do not know a thing in the world about who or I never heard anything about who done it

and I sure wish I did know who done any of it, as far as that goes.

Q. All right.

A. I only heard about what happened to Mr. Shrum and who shot Leonard Layne, I only heard that, now, that's the only thing that I know about that.

Q. All right. Let me ask you about the Tennessee Products situation. Did you ever have any labor disputes or work stoppages at the mines located on Tennessee Products' property?

A. Tennessee Products? One strike that comes to my mind is a truckers' strike that started on Daus Mountain. Now, what brought this strike around, I was coming in from home one morning, I still lived at Grimsley, Tennessee, at that time, and at the foot of Daus Mountain I come right down that blacktop road. I seen a gathering there. I said, "What in the world is this bunch all here for?" I didn't know whether there had been somebody hurt in the mines or what had happened on the mountain, but I stopped and I found out it was the truckers had put up a strike and got out and got to inquiring what the thing was.

They said that they was a feller by the name of Ward had opened a new mine on the mountain up there and had bought another truck, a new truck, and was a putting
4979 on that haul, which was absolutely contrary to what that Mr. Woody Travis told him when he opened up the mines on Daus Mountain, got him to buy the truck, got them to buy the truck and told them that they would be no more trucks put on that mountain so as long as they was able to haul and take care of all the coal that was produced on that mountain.

Now, these fellers on this here mountain, if I have been rightly informed, had always before that when they opened a new mine they tried to balance up the tonnage among the trucks that was there, they had the truckers committee and operators committee and if I understand when they opened up the new mine these truckers that was going to get

this haul at this mine, he had to haul the tipple material in there and the supplies to that mine to open it up with and the gravel or red dog or whatever they put on the road for nothing in order to build the road in there to get that haul out and the truckers did haul them rocks in there and build them roads and put on there in order to have the haul on that mountain.

So the strike stayed on a few days and I told Mr. Human, I said, "We can undoubtedly, as small a thing as that is, work that out."

And he said, "You put them fellers back to work and we will try to work it out."

I done my best to get them fellers to go back to
4980 work and I could not.

They said, "The only way we will go back to work is that agreement with Mr. Travis to be carried out."

This strike went on, I don't know, maybe a week, and it might have been a little longer, I don't know. Somebody got in them boys' mind that they was going to have to move on down on the Whitwell Mountain on Tennessee Products' property. This was Products' property on Daus Mountain, you understand, before they could even be recognized as having a grievance.

When they moved down there Mr. Human called me and told me, he said, "I think we need to meet and get something or another done about this."

He said, "Now, I have talked to the operators committee." And he said, "You get this truckers committee together and let's meet at the Daus scales in the morning and see if we can't settle that."

And I said, "Mr. Human, I will be right there and I certainly will do everything that I can to cooperate on this thing and get it stopped. I am getting tired of such as this."

We met there the next morning and they just absolutely was no progress made and they adjourned until the next morning and agreed to meet back the next morning and they

argued around there a right smart bit, I don't know
4981 too much about the agreement that had already been agreed with the truckers only what they told me. I imagine that they told Mr. Human what somebody told him.

Of course, Herschel Daffron could have told him all about it and I guess did.

We had a little recess after we had talked so much on that second morning so long, and I told the truckers, I said, "Boys, let's go back in there and propose to Mr. Daffron and Mr. Human that you fellows all go back to work, start hauling that coal and keep that there one truck off and that one mine down and there's no use in letting that interfere with all of the mines up here on this mountain and work this thing out while you fellers are going ahead hauling. You fellers are losing and so is the company and so is the men."

We went in and proposed that and they turned it flat down.

Q. Who is "they", who are you talking about "they"?

A. I am talking about Mr. Human and Mr. Daffron, they would not agree to that.

Well, of course, the meeting broke up, went home, and it went on a few days and Mr. Human called and told me, he said, "I am meeting with the truckers." And he said, "I am going to agree what we were talking about up there the other day." And said, "They is going to be a memo-
4982 randum of understanding drawed up this time and signed so from here on out you and I and everybody else will know what we are talking about without going on something or another that was orally agreed upon."

And that truckers agreement was drawed up and signed and that's the last truckers' strike or trouble that they had up there that I remember.

Q. Was Mr. Human saying that the agreement had been made or the truckers claimed that the agreement had been made with Woody Travis?

A. Oh, Human agreed that there had been an agreement

there with Mr. Travis but it was orally, it was nothing w
up about it.

He said, "We are going to write up something on
this time so there won't be no misinterpretation or no
understanding from here on out on this."

Q. Do you know when this work stoppage occurred?

A. Willard, I imagine that this was in the latter par
'61 or the first part of '62.

Q. All right. Was there any other dispute on
property in 1961 while you were there?

A. I think that the next dispute that we had was in
Griffith's Creek area when there was some seven
eight men fired over there for laying off and attendin
funeral.

4983 Q. Well was there any dispute over pay, vacat
pay or wages while you were there?

A. I think that that must have been, that was before
hearing that they fired these fellers.

Q. Were you there when there was a dispute over va
tion pay?

A. I sure was.

Q. All right. Tell about that, when it was and what
was about.

A. Well, they just wouldn't—they wasn't paying
wages that they agreed to in accordance with the men
randum of understanding in the contract, they wasn't
paying them vacation money and them men took the ca
up.

Q. Well, was there a work stoppage about it?

A. They might have been, Willard, a short work sto
page on that but, anyhow, we got an International co
mission in on that thing, too. Now, that thing had be
going on there just about every year about the vacati
money since them mines was going in and if I recall M
John Kmetz and a fellow by the name of Hank Allai a
there might have been another one, I am not for sure, Lew
Austin might have been another one.

Q. Who were they?

A. They were International men, presidents of some district now.

4984 Q. Were they able to work out a settlement of that?

A. They wasn't able to work out no settlement with Human. Mr. Human tried to get away from that memorandum of understanding which had been drawed up there before.

Q. Now, what memorandum of understanding are you referring to?

A. I am referring to the memorandum of understanding that was drawn up on the small mines that was opened by Tennessee Products in Grays Creek.

Q. That is one—

A. (Interposing) Not Grays Creek, Griffith's Creek.

Q. And that's not the truckers' memorandum of understanding you are referring to?

A. No, sir, it wasn't.

Q. That's a different one?

A. Yes, sir.

Q. And is this the one in regard to seniority or how they are going to take the men on the panel from the panel at Reel's Cove?

A. Yes, sir, it was supposed to take the men from the Reel's Cove panel list.

Q. All right. What was your discussion then with Mr. Human?

A. Well, now, Mr. Human said that he didn't, wasn't going to recognize that agreement because he didn't

4985 make it. So Mr. Kmetz took the position that, "You are filling in a man's place that did make the memorandum of understanding and we say that it is still good."

So, he said, "If you are not going to agree with me," he said, "I want to know who the boss is that I can talk to. Who is your boss?

Mr. Human told him who the vice president was, I have forgot about that. He said, "I don't want to know who the

vice president is." He said, "I want to know who the p
dent is, some man that I can talk to, some man that kn
something about this."

Well, he said, "Mr. Baum in Nashville is the preside
Then he said, "I will go see Mr. Baum."

Q. Who said he would go see Mr. Baum?

A. Mr. John Kmetz and Hank Allai and they did g
Nashville.

Q. Did you go with them?

A. No, sir, I didn't.

Q. All right.

A. If I am not mistaken in recalling Albert Pass w
with them.

Q. But you didn't go?

A. No, sir, I didn't.

Q. And subsequent to their going to Nashville
4986 there a settlement of that dispute?

A. I don't know. When they come back the c
tract was put in force in Griffith's Creek and them fello
vacation was paid for 1961.

Q. All right. Now, you were going to tell about anot
dispute regarding eight men being fired. Do you kn
when that was?

A. I thought that was what you was getting at a wh
ago, Mr. Owens. Yes, sir, there was some seven or ei
men fired in Griffith's Creek after that.

Q. When was this, do you know?

A. Now, that was along in '61 some time, in the lat
part of '61.

Q. Could it have been as early or late as April in 19
Let me ask you this: Do you know of any dispute involvi
a man by the name of Chafin or Chapin?

A. Judson Chapin?

Q. Yes.

A. Yes, he was an Edward Nunley employee.

Q. All right. What was the dispute about with him
over him?

A. He was fired, he was fired.

Q. For what, do you know?

A. For laying off and attending a funeral.

Q. Attending what funeral?

4987 A. A fellow by the name of, if I recall his first name, it was Joe Smith of Whitwell, a retired member of their local union.

Now, they had some kind of an agreement there in that local union that men would lay off when they wanted to and they had that with the company, too, or had carried it all of that time that a man was at liberty to lay off and attend a funeral if he wished to and they had done it before and had been carrying it out but that time somehow or another they seen fit to fire them fellows for laying off to attend the funeral.

Q. Was anybody else fired at that time?

A. I think this fellow that was fired one day and the next or so the Mutual Coal Company fired all of their employees for laying off and going to the funeral.

Q. All right. Then what happened, was there a work stoppage over this?

A. I think there was a short work stoppage over that too.

Q. All right. Then how was that solved?

A. We got them boys to go back to work and told them that we would arbitrate their cases after they was took up in the proper manner and we did try to and we submitted some referees, they submitted some. We finally accepted one of the referees, the umpire, whichever one

4988 you might want to call him, that they submitted theirselves. We was all set to have the hearings on it and some of the men found out that the man that was going to umpire the case was closely related to Max Condra.

Someone called him and asked him if he was related to Max Condra and him going to referee that case.

He said, "I did not know that Max Condra was connected with that mine." He said, "I understood it was Tennessee

Products mine operated by Chet Brown and James Sains." And he said, "If Max Condra is connected with that mine," he said, "I withdraw right now and will not umpire that case." And he said, "I will so notify them, too."

Q. Did you ever get that case umpired?

A. We was never able to agree on a referee.

* * * * * * * * * *

5012 ALBERT PASS,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Owens:

Q. Will you state your name?

A. Albert Pass.

Q. And your address?

A. Middlesboro, Kentucky.

Q. Do you hold a position with the United Mine

5013 Workers of America?

A. Yes, I do.

Q. What is that position?

A. Secretary-Treasurer, District 19, United Mine Workers of America.

Q. Where is your office?

A. Middlesboro, Kentucky.

Q. How long have you been secretary-treasurer?

A. Since March, 1952.

Q. Mr. Pass, did you have occasion to come to Southern Tennessee in 1955?

A. Yes, I did.

Q. Was there a stoppage of work at the mines in Southern Tennessee at that time?

A. Not at the time I came down there was not.

Q. Was there any kind of dispute at that time?

A. Yes, there was.

Q. What was that about?

A. Over the failure of certain companies on Tennessee Consolidated Coal Company property and the property of Tennessee Products and Chemical Corporation to pay the vacation pay that was due the last pay day occurring in the month of June of 1955.

Q. Was there a work stoppage over that dispute?

A. Yes, there was.

5014 Q. Do you know when that started?

A. It started some time in August, I don't know the date.

Q. All right. What did you do about that?

A. Well, I was directed to come down here by the president of District 19 either the latter part of July or the first part of August, I can't recall the date, due to the fact that they had had several complaints from the officers and members of the local unions and information from the field representative that there was quite a turmoil in the area because of the companies' failing to pay the vacation pay and we learned about it during the vacation period, the time that the mines were idle when they were observing the vacation period, and I got in touch, at the direction of Mr. Ridings, with the field representative near the end of the vacation period and asked him to talk with the members of our union and get the men to continue work until after the vacation period was over in order to give us an opportunity to contact these companies and see what could be done about it.

I did come down and on that basis and I did meet with the representatives of the Tennessee Consolidated Coal Company, which was Paul Callis, Everett Roberts, Ewing Hampton and a committee from the operators, I can't recall who was there, I believe Mr. Birdwell was

5015 there, I am not positive. They had a committee there and representatives of the Tennessee Products and Chemical Corporation and a committee of the operators at the old commissary building or supply house there at Whitwell.

We had quite a discussion about the vacation pay and we were advised that they couldn't pay it and they wasn't going to pay it and I went back to Middlesboro and I advised President Ridings and, of course, we had a committee of representatives from the local unions involved.

Shortly after that time, why, the work stoppage occurred at the mines where the failure occurred to pay the vacation pay.

Q. What did you do then?

A. Then I came back down here and talked with our people about the vacation pay and I stayed in and out of here quite a bit and I didn't do nothing then.

Q. Well, did you have any more meetings with the operators?

A. The only thing between that time and the time that they came to George Gilbert's house, which was in October, I did nothing except insist—I had no meetings with the operators except to insist that the vacation pay be paid to these members of our union.

Q. All right. Now, was there any dispute over the Welfare Fund, payment of royalty to the Welfare Fund?

5016 A. Yes. Some time after we had the meeting with the people I just mentioned at the commissary building, we learned that the companies on these big companies' property weren't paying all of the coal—weren't paying royalty to the United Mine Workers Welfare and Retirement Fund on all of the coal that they produced for use or sale, so I talked with several of our members and they gave me the names of the companies that they were employed at and they showed me their pay statements and I went back to the District office and I picked out the companies that they gave me, which were a few, there weren't too many of them, maybe four or five, and in addition I picked out several other companies at random and got from the files the District copy of the check letter of advice which shows the amount of tonage that is produced by the company and paid

on to the Welfare and Retirement Fund and the period for which it covers.

Q. Who sent in the check letter of advice?

A. The coal companies do. And I brought those back down and checked with our people and we learned that they were not paying on all of the coal that they had produced for use or sale, in fact, we learned that they were only paying on two or three days production a month, so the royalty then got into it.

Q. All right. Did you discuss that with the operators?

5017 A. The first discussion I had about the royalty with the operators was the evening that some 30 or 35 cars pulled up to George Gilbert's house, which were the small operators on the property of both of these large companies, and we discussed the situation at that time, both the vacation pay and the royalty.

Q. All right. What did you do?

A. Well, it first came up, we went out to see what was going on or what they was there for and they did have a couple of newspaper men and a photographer and they were asked to leave and they did leave and then I asked the operators what they wanted and they said, "We want to know what we can do to get our mines back in operation." Said, "We can't find out anything from the two big companies and we come down here to see what we can do about it."

I said, "Well, I have had a lot of time to study about it." I said, "I have got some suggestions that I believe might work on it."

We was all sitting in the lawn at George Gilbert's home and I suggested to them in order to straighten out this vacation problem that we have every year that they pay it by the month so that at the end of the year that every man would have received his vacation pay and they agreed.

I suggested to them that in order to straighten this problem up on this payment of royalty to the United

5018 Mine Workers Welfare Fund that they execute an authorization to these two large companies on those properties they held leases and were mining coal to withhold 40 cents a ton under the provisions of the contract and let the large companies forward the royalty payments to the United Mine Workers of America Welfare and Retirement Fund. They agreed to it. I went into—I asked George if he had a typewriter or either I knew he had one, I don't recall correctly but, anyhow, I went into his house and sit down and drew up two or three authorizations that I thought would be correct, that would be workable, and the number that I drew up, ever how many it was, why, that many operators signed it. It was growing late in the evening and they then said to me, said, "Well, we are going to have to get permission and contact these two large companies before we can do anything anyway."

I said, "Well, that's all right with me."

So either they called the representatives of Tennessee Products and Chemical Corporation and Tennessee Consolidated Coal Company or either I called, I don't remember who called but, in any event, we set a meeting up with them for the next morning or either the next morning, it was either the next day or the following day, at which time that met in the Reel's Cove office of the Tennessee Products and Chemical Corporation with representatives from the Tennessee Consolidated Coal Company present who
5019 were Paul Callis, Everett Roberts, Ewing Hampton; representatives from the Tennessee Products and Chemical Corporation were Woody Travis, Herschel Daffron, Jim Miller, I believe that is all from there; representatives of the small operators local union committee were George Gilbert and myself.

Q. All right. What took place at that meeting?

A. We opened the meeting up and discussed the situation that occurred at George Gilbert's house and told them what we did and I did have those authorizations from those operators, I can't recall who they were that had signed with

me, and I showed them to them, but the first thing that we did take up was the vacation pay and advise them, of course, about the monthly arrangement and we didn't have too much difficulty on that, just a very short discussion because everybody was in accord anyway and we agreed to it.

Then the royalty authorization arose and we had considerable discussion on the wording of the authorization and the wording of the letter of transmittal of those authorizations. After they were executed they had to be forwarded, they had to be sent to the District office, then the letter that we had the difficulty on was the one that the District was to send back to the coal company to allow them to withhold the 40 cents.

So we started out, we started writing. Mr. Callis, he would get on the phone and he would call Nashville
5020 and they would talk a while about certain language that was in it and then about the time we would get that straightened out Woody Travis would get on the phone and call over here at Chattanooga where Mr. McFarlin was at, and they would discuss it a while. We liked to have never got it agreed to, but we finally did.

Then the next morning—

Q. (Interposing) Was there any discussion about withholding, on what coal they would withhold this 40 cents on?

A. Oh, yes; yes; yes, sir. In the authorization it provided that they would withhold, generally speaking it provided that they would withhold the 40 cents per ton and forward it to the Welfare and Retirement Fund and that that authorization, as I recall, would take effect, I mean was effective as of some time in the first part of November, 1955, and would cover new coal sales contracts, I believe generally that's what it contained.

Q. Was there any discussion about coverage on the old contracts?

A. No, sir, there was no discussion about that. They didn't mention it and I didn't mention it. The only refer-

ence that was ever made to the delinquency that might show up was when I told them that they were not paying on all of the coal that they produced and that we needed
5021 to get some sort of an arrangement fixed and let those two large companies send it in.

Now, my reason for asking that this royalty be withheld and forwarded by these two large companies was this: They controlled the entire workings of these small companies on their property; they bid their coal for TVA; they could not sell a pound of coal to anyone for any use without permission from the two large companies and I had been advised and again that most of these small companies didn't have bookkeepers, they didn't, some of them unfortunately weren't able to read and write themselves, the most of them used their wives as bookkeepers. They weren't forwarding Social Security to the government to cover these people, reasons of that kind.

Mr. Rowntree: I object.

A. The reason that I asked—

Mr. Rowntree: (Interposing) Object to the last on the ground of hearsay.

The Court: Sustained.

A. So we agree to the authorization.

Q. All right.

A. But the—

Q. (Interposing) Was there any agreement that they did not have to pay the Welfare Fund royalty on the old business?

5022 A. No, sir, absolutely not, it wasn't even discussed.

Q. All right. Do you recall when that settlement was made, approximately?

A. It was some time near the first of November, either the first week in November or sometime near November of 1955.

Q. I show you a letter dated December 20, 1955, and ask you if you can identify that?

A. Yes, sir, I can.

Q. What is that?

A. That is a letter addressed to the International Secretary-Treasurer, John Owens, dated December 20, 1955, signed by me with copies to John L. Lewis, President of the United Mine Workers, and Thomas Kennedy, Vice President of the United Mine Workers.

Mr. Owens: May I have that marked for identification?

Mr. Rowntree: I would like to see the letter.

The Court: Exhibit No. 400.

(The letter referred to above was marked D400 for identification.)

Q. Does that letter state the substance of the agreement?

A. Yes, sir.

Mr. Owens: I would like to read that. It is addressed to Mr. John Owens and is dated December 20, 1955.

5023 Mr. Rowntree: I didn't get the purport of your last question, expressed the agreement, what agreement?

Mr. Owens: The agreement about the withholding of the royalty and the vacation pay.

Mr. Rowntree: The best evidence is in the memorandum previously filed authorizing the withholding.

Mr. Owens: I want to show this was reported by him.

Mr. Rowntree: I don't object to that but I don't want that to show that it is in the agreement.

Mr. Owens: "Dear Sir and Brother:

"As you know our membership in Southern Tennessee was idle for nine weeks because the $1.20 increase in the new contract and the vacation pay had not been put into effect by the operators of the small mines, and, also, the UMWA Welfare and Retirement Fund was only receiving approximately four days production per month from the majority of these small mines. Most of these small mines are on the property of the Tennessee Consolidated Coal Company and the Tennessee Products and Chemical Corporation, who receive the entire production from these small mines and in turn sell the coal to TVA.

"Through the assistance of the International Union our membership in these small mines has secured the $1.20 increase and $11.67 per month vacation pay and the
5024 two above-mentioned large companies have agreed to withhold the 40 cents per ton royalty for the Welfare Fund from these small mines on all new coal sales contracts entered into after October 28, 1955.

"Our membership in these small mines has received approximately $92,000 unemployment insurance and our membership in the two large mines has received approximately $60,000 unemployment insurance, which was granted after our members had returned to work.

"We were not able to correct all the ills that existed in this section of our District. However, we believe the remaining problem can be resolved at a later date."

I won't read the last paragraph.

Q. During this period of time was an amendment to the 1952 or 1950 contract executed?

A. Yes, there was an amendment effective September 1, 1955.

Q. Had the two larger signed that amendment for the Reel's Cove and the Coal Valley Mine?

A. Yes, they had.

Q. How about the small operators?

A. The small operators had not signed.

Q. When did they sign?

A. They signed on the day following the meeting that we had in the Reel's Cove office with the company
5025 and union representatives that I just mentioned the following day, at which time the company made arrangements for tables to be set up and chairs whereby that the contract could be executed by the operators and the authorizations be executed by the small mine operators.

Now, all of them weren't there that day, the vast majority of them were present and then the others executed the contract at a later date.

Q. All right. Let me direct your attention now to 1957.

Did you become involved in any work stoppage or do you recall a work stoppage in 1957?

A. 1957, yes.

Q. What was that about?

A. I believe it was in '57. The Tennessee Consolidated Coal Company decided to put in a strip, a strip and auger operation on their property, and I believe—

Q. (Interposing) Are you talking about the Whitwell Coal Company?

A. Yes.

Q. Do you know if there was a dispute over payment of wages in 1957?

A. The Whitwell Coal Company?

Q. No, any place.

A. Yes, yes.

Q. What was that about?

5026 A. There was the small mines on the property of Tennessee Products and Chemical Corporation that had failed to put into effect the 80 cents wage increase under the 1956 amendment that was to be effective on April 1, 1957, and those mines were down for, well, not very long, maybe a week or so. Then the mines were down on the Tennessee Consolidated Coal Company's property because they didn't have any coal sales contract with the TVA and we learned through investigation that the Tennessee Consolidated Coal Company had taken the coal sales contract that they had for TVA with the small mines and was filling the order at the Coal Valley Mine of the Tennessee Consolidated Coal Company. They were down.

Q. What was the dispute over the wage raise, how was that resolved?

Mr. Rowntree: May I inquire what date we are talking about?

Q. This is in April, he said, I think of 1957.

A. Yes, of '57. That was resolved by the men not working until the small companies decided to pay it.

Q. Well, was that decision made?

A. Yes, sir.

Q. Were the men subsequently put to work?

A. Yes, sir.

Q. Now, you mentioned something about the Whitwell Coal Company, the auger and the stripping operation. Now, do you know what year that started?

5027 A. I believe, I could be mistaken, but I believe that was in August of '58 when it first started, it was in the summertime.

Q. Did you receive any complaints from Mr. Callis about absenteeism at his mines during this period of time?

A. Yes, sir, I did.

Q. All right. What can you tell about the report you had?

A. He had, Mr. Callis and his representatives of the Tennessee Consolidated Coal Company, or the Coal Valley Mine, had had a discussion with the field representative and the mine committee at that mine, at which time that he complained to them about the absenteeism at the mine and later I was advised by our field representative of the meeting and the complaint and later Mr. Callis called me, or I was either down at Palmer, I don't recall which, at which time it was called to my attention and, of course, I took it up with President Ridings and he directed me to see what I could do about it.

Q. What did you do?

A. Well, first I had a meeting with the officers of the local union and the committee and talked with them about the matter and they advised me that there were people in their opinion employed at this mine that were un-

5028 necessarily laying off from work and that they were some people working at that mine that were, in their words, were the "fair-haired boys" of the company that could lay off practically when they wanted to, and when I say "the company" I mean certain foremen and not anything much would be said about it and we discussed the policy of our union, I did with the committee and the officers, then I set up a meeting with Mr. Callis, Mr. Roberts, the mine fore-

man was present, I believe his name was Morrison, in the office of the Tennessee Consolidated Coal Company at Palmer, and we discussed the matter and they advised me and the officers and committee that unless they got their coal production up that they wasn't going to be able to get coal sales contract with TVA and that they believed that if we and them together could correct the absenteeism that it would be helpful and I told them I would be more than glad to go to the man trips at that mine and advise our people and insist that they refrain from such unnecessary or unwarranted absenteeism and I did go down, met all of them in the bath house and I did talk to them about it and I told them that under the policy of the United Mine Workers and under referees' decisions that we had received, not only in District 19 but in other places, other jurisdictions of the Mine Workers, that people who were off from work two days in succession, other than proven sickness or permission to be off, were subject to discharge and
5029 that if any of them in the future got caught into that and they were discharged that the union wasn't going to back them and they just absolutely fired themselves, and I further stated that if this coal company let their "fair-haired boys" get away with laying off and they didn't penalize them and they get some man innocently and penalize him we will be back to talk to you further about it, if that incident should occur.

Well, to my knowledge it did not occur and that was the substance of the meeting.

Q. Did you ever hear from Mr. Callis about that?

A. Oh, yes. I met Mr. Callis several times after that and Mr. Callis told me what a good job I had done on it and the officers of the local union and the committee and of the tremendous improvement that occurred because of the meeting that we had from the absentee standpoint.

* * * * * * * * * *

5030 Q. Mr. Pass, I think I had asked you about the incident involving Mr. Gibbs in 1960.

A. Yes.

Q. Do you recall that incident?

A. Yes, I do.

Q. Do you recall where Mr. Gilbert was during tha period of time?

A. Yes, I do.

Q. Where was this?

A. He was in the District headquarters, Middlesboro Kentucky.

Q. And do you know when that was?

A. It was in August and it was on a Tuesday, 5031 believe.

Q. All right. What was the purpose of it?

A. He was called in to Middlesboro along with the othe District 19 representatives to a District Executive Boar meeting.

Q. Now, if that meeting was on Monday or Tuesday—

A. (Interposing) We had the meeting on Monday an part of the day on Tuesday.

Q. All right. Now, did you receive any information abou a work stoppage or picketing that involved Mr. Gibbs?

A. I received a call and at the time I received it I didn' know what it involved but I received a call from Mr. Henr Turner, who was a safety committeeman, and a mine com mitteeman from Local Union 5881 of the Coal Valley Min and he wanted to know where George Gilbert was and I tol him that he was there in the office with us and he said, "W got some trouble down here."

He said, "They is some men down here trying to tak our jobs and we need George down here to help us."

And I said, "Well, I will talk to George and as soon a we can get him going, why, he will be on his way down t help you out.

Q. All right. Did you contact Mr. Gilbert then?

A. Yes, I talked with Mr. Ridings and we both talke with Mr. Gilbert and I related to Mr. Gilbert what Turne

had advised and Mr. Ridings and me told George
5032 to go down and look into the situation and see what it was going on and to call us back and let us know.

Q. All right. Now, did you have anything else to do with that dispute?

A. I don't think — no, I don't think I had anything else to do with that, as I recall.

Q. All right. Do you recall the dispute at the mine, at the Coal Valley Mine when Allen and Garcia operated that Tennessee Consolidated?

A. Yes, I was in practically all of the situations that arose, not all of them, but practically all that Allen and Garcia operated.

Q. Without going into all of the details, what generally was that dispute about?

A. Well, first, the troubles that we had was after, of course, they had rehabilitated the mine, cleaned it up, got ready to produce coal, was the calling of the people to employment that had previously worked for Tennessee Consolidated Coal Company at the Coal Valley Mine and the question that arose in the first instance was the seniority and the qualifications of the people to perform the work required to produce the coal.

Then some little time went by after they started producing coal and an International commission, composed of
Mr. Joe Yablonski, Ewing Watt and myself repre-
5033 senting District 19, and the mine committee representing Local Union 5881, met with Mr. Fitzgerald, Mr. Poore, I believe a Mr. Kennedy was present, representing that company, Allen and Garcia Company, and a Mr. Bradley, and we had quite a discussion on some problems that had arisen over neglecting to call the people to work in accordance with a memorandum of understanding that had been reached between the parties back in May.

So through—as a result of the discussions we had, rather, we agreed upon a training program to be effected at the

mine for the reasons that the company had purchased equipment that had never been operated in that mine and very few, if any, of the employees had ever operated equipment similar or exactly, I might say, as the equipment that they installed.

So the memorandum, of course, very briefly provided that they would have so many men on the crew, that they would train these men to perform to operate this machinery, then as they trained them they would go to a later shift. The new men they trained would always be on the day shift and then after the four crews were trained, why, the first one would revert back to the day shift and so forth and further agreed that the District, the local union and the company would meet later and agree upon a shift arrangement, a shift seniority arrangement, that is to say, that it
5034 would be an understanding as to which shift the employees would work on.

We then further agreed as had been told to the men by Allen and Garcia Company, and by Tennessee Consolidated Coal Company, previous to our day of discussion, that any new mines that were open on the property of the Tennessee Consolidated Coal Company, that the men employed at the Coal Valley Mine and the men on the panel at the Coal Valley Mine would be the men that were placed in those jobs and the meeting, after we finished getting the memorandum written up we adjourned and I went back to the office, in fact, and had it typed up and sent it back and, of course, the president of District 19, Mr. Ridings, he executed it and sent it back and I believe that the field representative took it to the company. They executed it, and then it was taken to the mine committee or maybe the mine committee first, I don't know, they executed it, then we went along pretty well for a short period of time and then the company began to call people to work on this training program.

They would call men in to train them to operate a shuttle car. The person that they would call would go into the mine

and he would sit and watch one of the foremen, mostly, as I recall, Mr. Bradley, operate the shuttle car.

Then Mr. Bradley would turn the shuttle car over to the employee to operate. After the man would try to operate it and he couldn't operate it because he hadn't had
5035 time to learn, as the facts will show, then they would tell them that evening, "You are cut off." And they would give him a slip showing that he would not qualify.

On the Joy loading machine, Joy loading machines, the same thing occurred. Roof bolting conditions, which they had never had in that mine also, the same thing occurred. Even on cutting machines where men had been cutting coal in the mines all of their life, undercutting the coal so that it could be shot down, they contended that that man could not learn to operate a cutting machine, even though the basic principles were the same.

In one instance we had a man over there that had drilled and shot coal for that company for some 20 to 30 years and they contended that that man didn't know how to shoot coal and they disqualified him.

Q. Did these—

A. (Interposing) Well, with all of this turmoil arising amongst the members of my union that I represent they got to where that they wouldn't even believe the company nor me nor nobody else and we would go into the office to take these grievances up and it was a cuss fight from one end to the other and they were threatening all of the time that they was going to bring people in from West Virginia to operate that mine and that them people—and the statement was made by Mr. Fitzgerald—didn't have sense enough
5036 to know how to operate machinery in a coal mine and did make that remark, for example, in front of that mine committee, the president of that local union, and to people outside of the meeting that we were in and it was a continuous uproar.

Then we finally got to the point to where that they

wouldn't even talk to the aggrieved parties as provided for by the contract.

It is always, of course, insisted by both the operator and the union that if a man has a grievance that he must first take that grievance up himself, that the local union mine committee can't take it up for him, nor the district take it up for him, he has got to take it hisself. He would go to take his grievance up, they wouldn't even talk to him about it, so we just had one awful time.

That's about the story.

Q. All right. You did have some grievances that were processed through the grievance machinery, isn't that right?

A. Yes, we did.

Q. Did you have a dispute over who was going to be the umpire to decide that?

A. Yes, we did, and we had the cases, we had two instances on that, as I recall. The first one was on the three members of your union that they had cut off that they contended weren't qualified and couldn't learn.

5037 We contended to the contrary and we finally got it up to the point and it did take quite a while to get it up to the point of the joint board of arbitration, which was two members of the operators, two members of the Mine Workers, and we met on it and disagreed and then we begin to submit names of people to act as referee in the case.

Mr. Owens: By agreement of counsel let me have this marked as Exhibit 401.

(The letter referred to above was marked D401 for identification only.)

Q. I hand you a letter marked Exhibit 401 and ask you if you recognize that?

A. Yes, sir, I do.

Mr. Owens: I'd like to read this letter and it is Exhibit 401, dated January 5, 1962. It is addressed to Mr. Gene Poore, Superintendent, Allen and Garcia Company, Palmer, Tennessee.

"Dear Mr. Poore:

"I refer to our joint board meeting of December 21, 1961, at which time your side submitted the names of Sam Polk Raulston and John Herbert Harris as referee in the cases which we disagreed upon.

"After a thorough investigation, we would advise at this time that neither of these men would be acceptable to us to act in this capacity. We should like your position on
5038 the two men which we submitted to you. If neither of our proposed are not acceptable to you, would you please submit other prospects for our consideration."

I don't think there is any need to read the last two paragraphs.

Q. Do you know the names that were submitted verbally by the union at that meeting?

A. As I recall, we submitted Mr. John Grady O'Hara. Do you want me to describe who they are or just the names?

Q. No. Do you know that is the first ones at that meeting in December that you proposed?

A. Well, I just can't recall.

Q. All right. I show you a letter marked Exhibit No. 402 and ask you if you recognize that?

(The letter referred to above was marked D402 for identification only.)

A. Yes, sir, I do.

Mr. Owens: I'd like to read this letter, Defendant's Exhibit 402, dated January 18, 1962. It is addressed to Mr. J. W. Ridings, President of United Mine Workers of America District 19.

"Dear Mr. Ridings:

"We have your letter of January 5, 1962, advising us that Sam Polk Raulston and John Herbert Harris are not acceptable as a referee.

5039 "We cannot accept John Grady O'Hara or Hugh P. Finley.

"We submit the names of Judson Harwood, of Nashville and Judge Trammel, of Jellico.

"We certainly hope one of these men will be acceptable to the union.

"P. H. Fitzgerald, Allen and Garcia Company."

Q. I show you another letter marked Defendant's Exhibit 403 and ask you if you can identify that letter?

A. Yes, I do.

(The letter referred to above was marked D403 for identification only.)

Mr. Owens: I would like to read Defendant's Exhibit No. 403. Addressed to Mr. P. H. Fitzgerald, Vice President, Allen and Garcia Company.

"Dear Mr. Fitzgerald:

"This will acknowledge receipt of your letter of January 18, 1962, wherein you submitted the names of Judson Harwood and Judge Trammel as possible referee in the cases which the board could not agree upon on December 21, 1961.

"I am sorry to advise but we cannot accept either Mr. Harwood or Mr. Trammel and wish to submit for your consideration Mr. Estill Hughes, South Pittsburgh, Tennessee, or Mr. Alvin Young, Whitwell, Tennessee."

This is signed by Mr. J. W. Ridings.

5040 Q. Do you know Mr. Estill Hughes?

A. No, I do not know Estill Hughes.

Q. Do you know Alvin Young?

A. Yes, I know Mr. Alvin Young.

Q. Who is Mr. Alvin Young?

A. He is a barber in Whitwell, Tennessee.

Q. Had he ever been a referee in any cases prior to this?

A. Yes, he had.

Q. Do you know if Mr. Estill Hughes had been used as a referee or umpire in these labor cases?

A. Not to my knowledge.

Q. Do you know who Judge Tramel was?

A. Yes, I do.

Q. Do you know why Mr. Tramel unacceptable to the union?

A. Yes, I do.

Q. What was the reason?

A. Mr. Trammel was the permanent referee for the Harlan County Coal Operators Association and District 19 United Mine Workers and he had served as a referee for several years and finally the cases that we would submit to Mr. Tramel, after hearing them, of course, and submitted to him for decision he would withhold making decision in the cases for six to eight months at a time and finally
5041 we just decided that we would fire him because the withholding of those cases and the decisions was not only causing the United Mine Workers trouble, it was causing the United Mine Workers trouble, it was causing the coal companies trouble, so we just discharged him.

Q. Does the delay in processing these cases cause any difficulties?

A. Most certainly.

Q. Why would that be?

A. The people who are discharged are continually talking with people that are working in the mine and whether they tell the truth about the situation at hand or whether they don't, it tends to keep an uproar and turmoil amongst the employees of the company and the members of our union, and, of course, the quicker that we can get a decision the better off those parties are.

Q. Does it cause any difficulty in getting the men to remain at work pending settlement?

A. That's what I was referring to, yes. Then, you know, everything is not going to remain status quo. It is impossible for it to while this period of time is elapsing. You have other cases arising during that time and naturally it is the feeling of the people there is nothing being done about the ones that has been pending for a good period of time and

they are not going to do anything about it and they will not do anything about my case.

5042 Q. Now, I show you another letter and ask you if you can identify that, marked Defendant's Exhibit No. 404.

(The letter referred to above was marked D404 for identification only.)

A. Yes, I do, yes.

Mr. Owens: I'd like to read Defendant's Exhibit 404, which is dated March 5, 1962, addressed to Mr. J. W. Ridings.

"Dear Mr. Ridings:

"Replying to your letter of January 23, 1962, we have checked out Mr. Estill Hughes and Mr. Alvin Young as possible referee in pending board cases and find that they are not acceptable to us.

"We offer Mr. Ables, Jr., of South Pittsburg, as a possible referee. If he is not acceptable we believe the only possible referee we could agree to with you would be Mr. John L. Lewis, President Emeritus, of United Mine Workers of America.

"We could each submit written briefs to Mr. Lewis and he could rule on the case without leaving Washington."

Signed by P. H. Fitzgerald, Allen and Garcia Company.

Q. Was there ever an agreement that Mr. Lewis would act as an umpire?

A. Mr. Lewis refused to act as an umpire.

5043 Q. Do you know subsequently that Mr. Kennedy then was selected?

A. Mr. Thomas Kennedy was agreed upon by both the Allen and Garcia Company and District 19.

Q. Do you recall the date that that was agreed upon?

A. No, I can't recall that date.

* * * * * * * * * *

The Court: Very well, they will be received.

(The documents previously marked D400 through D404 for identification were received in evidence.)

A. Yes.

Q. Did you receive copies of those telegrams?

A. Yes.

Mr. Owens: I'd like to read these telegrams. I might state that they came after a telegram that is already an exhibit, maybe both of these, telegrams from Allen and Garcia to Mr. Kennedy about a work stoppage.

5044 The first one is dated February 21, 1962, addressed to Mr. Waldon Shrum, in care of Alder Brewer, Financial Secretary of Local 5881, United Mine Workers of America, Palmer, Tennessee. It says: "International Union has been advised of walkout at Coal Valley Mine yesterday afternoon. International and District officers fully aware of problems at issue and are exerting every effort to protect the interest of your membership. We therefore respectfully urge an immediate resumption of work, which will enable us to settle these grievances under the machinery of the contract."

Signed, "Thomas Kennedy, President, United Mine Workers of America."

The second telegram in the exhibit is dated the same date, February 21, 1962, addressed to James Ridings, President of District 19, UMWA, reads as follows: "Following wire forwarded Waldon Shrum, President, Local Union 5881: 'International Union has been advised of walkout at Coal Valley Mine yesterday afternoon. International and District officers fully aware of problems at issue and are exerting every effort to protect the interests of your membership. We therefore respectfully urge an immediate resumption of work, which will enable us to settle these grievances under the machinery of the contract.' "

Signed, "Thomas Kennedy, President, United Mine
5045 Workers of America."

Q. Did you also have a conversation with Mr. Kennedy concerning these walkouts?

A. Yes, sir.

Q. Did he give you any instructions as to what to do?

A. Yes, sir.

Q. Did you make a report to Mr. Kennedy as a result of those conferences?

A. Yes, I made reports to Mr. Kennedy on that, yes.

Q. All right. I hand you a letter dated February 21st and ask you if you can identify that letter?

A. Yes.

The Court: Were the telegrams Exhibit 405?

Clerk Robert Dale: Yes, your Honor, on one page.

(The telegrams referred to above previously marked D405 for identification were received in evidence.

Mr. Owens: Defendant's Exhibit No. 406.

(The letter referred to above was marked D406 for identification only.)

Q. This is another letter dated February 21, 1962, to Mr. Thomas Kennedy, President, United Mine Workers of America.

"Dear Sir and Brother:

"In accordance with the telephone conversation
5046 with your office today, I am submitting the following report concerning the existing situation at Allen and Garcia Company, Coal Valley Mine, Palmer, Tennessee.

"On Tuesday, February 20, 1962, Allen and Garcia Company employed two men —

Mr. Rowntree: (Interposing) If your Honor please, we object to the truth of the matters alleged in the letter. We do not object to the use of it to show that this communication was made between the District and the International.

Mr. Owens: That is the purpose of offering it.

The Court: All right.

Mr. Owens: "On Tuesday, February 20, 1962, Allen and Garcia Company employed two men from Virginia as shut-

tle car operators. Neither of which were on the panel list at this mine. The Tuesday evening shift reported for work and advised P. H. Fitzgerald, Vice President, and Gene Poore, Superintendent, that if the company would comply with the memorandum of understanding and not work these outside men, they would go on to work. The company refused this proposition, thus resulting in an unauthorized work stoppage.

"I talked with Mr. Fitzgerald by telephone yesterday evening and advised him that the District officials would do everything possible to get the mine back to work immediately.

5047 "I talked by telephone to District 19 Field Representative Howard Madewell, Local Union 5881 President Waldon Shrum, and Mine Committeeman H. D. Ross and instructed and strenuously insisted that this mine return to work at once. All three of them said they would do all they could to do so.

"District 19 officials wish to advise the International officers that we will keep working on this situation until we are successful in returning the mine to work, and any valid grievances will be processed through the channels of the grievance machinery of the contract.

"Sincerely yours," signed, Albert Pass, Secretary-Treasurer."

Q. I show you what purports to be another letter dated February 21, 1962, and ask you if you can identify that letter?

A. Yes.

Q. And that is a letter addressed to President Kennedy?

A. Addressed to Thomas Kennedy, President, United Mine Workers of America by me.

Q. Did you write the letter?

A. I wrote the letter.

Q. I note that it is dated the same date as your other letter.

5048 A. Dated February 21, 1962.

Q. Do you know why you wrote two letters tha day?

A. Yes, sir, I do.

Q. Why?

A. After I wrote the first letter and put it in the mai I got to reading the copy, my copy of the first letter, an I discovered that I had not given to Mr. Kennedy the ful background of the situation of Allen and Garcia and thought that I should give that to him so that he woul know the entire problem or problems that existed at tha mine.

Mr. Rowntree: Is this offered on the same basis as th last?

Mr. Owens: Same basis. Your Honor, I'd like to read from Defendant's Exhibit No. 407.

(The letter referred to above was marked D407 for identification only.)

Mr. Owens: Letter dated February 21, 1962, addressed to Mr. Thomas Kennedy.

"Dear Sir and Brother:

"Inasmuch as we have experienced considerable difficulties at the Coal Valley Mine of the Allen and Garcia Coal Company, Palmer, Tennessee, we wish to submit the following report for your background information.

"As you know, the International Commission, composed of Board Members Joseph Yablonski and Ewing

5049 Watt, District 19, Local Union 5881 Committeemen, negotiated and signed an agreement which, in substance, provides that the men to be employed at the mine will be taken from the panel list which was furnished the company by the local union and trained to operate their equipment. There were numerous persons on the panel list who were called to be trained on equipment and were not given even a halfway chance to learn, and after a few days were cut off. Also, some were called, and after trying to

learn, realized they could not and so advised the company. Since the memorandum of understanding was signed, the local union committee and President Ridings and myself have been told by this local mine management that it is not a part of the contract, and then they refer to Section 5 of the 1952 seniority clause. There is no doubt that there are sufficient capable men on the panel list that could learn to safely and efficiently operate any and all equipment necessary if the bosses would spend more time training than they do operating the equipment themselves just for production of coal.

"On December 21, 1961, two cases were heard by the Arbitration Board which resulted in disagreement. Names have been submitted by both the company and the District, and we have been unable to agree upon a person to rule on these cases. The company has submitted the names of two lawyers, one which is the company's attorney, a Mr. 5050 Judson Harwood, and the other is a Mr. Pope Ralston, who is the member of a law firm which has a suit against the Welfare Fund. We submitted the names of persons who have acted as referees for all the associations in our district and other independent companies, also a business man at Whitwell, Tennessee, and the County Judge of Marion County, Tennessee. To this date these cases are still pending.

"Within the last six weeks the company has discharged two employees for absenteeism. These discharges were sustained by the District, and the mine continued to operate. On or about February 2, 1962, the company employed Jack Creighton, who lives near Palmer, Tennessee, as a loading machine operator and who is not on the panel list. President Ridings and myself met with P. H. Fitzgerald, Vice President, and Gene Poore, Supervisor, at which time they brought this matter up and we advised them that in the event of a grievance was instituted it would be carried through the grievance machinery of the contract. This meet-

ing was held on February 8, 1962. This company, being fearful that the mine would close because of hiring this new man, sent a long telegram to the International Union stating that we were in violation of the agreement by permitting two members to serve on the mine committee who were not working, and that we, as District officials, were unable to cope with the situation at this mine. The mine committee question was discussed in the meeting, at
5051 which time we agreed that the two men in question had been very valuable in assisting to keep down confusion. They further stated they would recognize the committee until a new committee was elected. Notices have been posted for the election of working mine committeemen, which will be held at the next local union meeting. They stated that if a referee was agreed upon to hear the above-mentioned cases, that they were going further than a referee on the matter, but would not tell us what they meant by this statement.

"They failed to report dues and initiation fees monthly to this office as provided by the contract for the period August through December, 1961. I called this company, they finally sent in the dues up to date. They have not paid any royalty on the coal produced since this mine has been in operation. In the latter part of January 1962, President Ridings called Mr. Fitzgerald on this matter, and he advised Mr. Ridings that this was not the responsibility of Allen and Garcia, but was the responsibility of the Tennessee Consolidated Coal Company, which is the former operating company. I am attaching hereto copies of check letter of advice, which are self-explanatory. You will note these copies are dated June 1, 1961, and July 1, 1961. They were received by the Fund February 5, 1962, and February 7, 1962, respectively. This all concern, of course, following the telephone conversation concerning delinquent royalty
5052 payments. There has absolutely been no agreement or any discussion that Allen and Garcia Company be

permitted to not pay royalty to the Fund as provided by contract. Prior to Friday, February 16, 1962, this mine was averaging a production of approximately 500 to 700 tons of coal per day. On Friday, February 16, the mine produced short of 1,000 tons for the two shifts. I received this information from the truck drivers.

"Mr. Fitzgerald and Mr. Poore advised the District officers, the International Commission and the International officers that they had no intention of bringing any outsiders to Palmer to work in this mine, and there were enough men on the panel list that they could train, if permitted to choose the persons they thought could be trained. After considerable work by the local union officers and the District officers, they have been given the opportunity to choose anyone they desire from the panel list to train on the equipment, which are loading machines, shuttle cars and cutting machines.

"On Monday, February 19, 1962, they went and got two men from Virginia, had them examined and placed them to work Tuesday, February 20, 1962, which, of course, caused the existing unauthorized work stoppage. It is further reported and at this moment I do not have it factual, that they have had four or five other persons, outside the panel list, examined and ready to place to work. The local president and mine committeemen told me that the members felt that this company had no intention whatever of carrying out the memorandum of understanding, and if they filled the mine up with men from outside the panel list that no one from Palmer would be employed. Of course, this is no justification for an unauthorized work stoppage, and they were advised to get this mine back in operation and take up the questions under the grievance machinery of the contract.

5053

"I sincerely believe that the local management of this company, together with Judson Harwood, Attorney for Tennessee Consolidated Coal Company, are doing their best to lay groundwork for a lawsuit against our union, and

further, are carefully and purposely creating unnecessary incidents in an effort to weaken our union in this area to the extent that it will become ineffective. This Judson Harwood is indeed a treacherous person without any scruples whatsoever, and so is Paul Callis, President, Tennessee Consolidated Coal Company.

"Yours very truly, Albert Pass, Secretary-Treasurer."

* * * * * * * * * *

Q. Does this letter state the situation as you saw
5055 it?

A. Yes, sir.

Q. All right. Do you know if the Coal Valley Mine subsequently was closed?

A. Yes, it was.

Q. By the way, do you know when Mr. Kennedy was agreed upon that Mr. Kennedy would act as the umpire?

A. I can't recall that date.

Q. Do you know when the Coal Valley Mine then was closed?

A. I believe that the Coal Valley Mine closed some time in either April or May of 1962.

Q. All right. Did you participate in any of the meetings concerning the opening of the Grays Creek No. 11 Mine?

A. No, I did not.

Q. Do you know that subsequently there was a mine re-opening in Grays Creek No. 11?

A. Yes, I do.

Q. Did you attend any of the meetings or were there any disputes arising at that mine?

A. Yes, there was.

Q. Did you attend any of those meetings, any meetings concerning those disputes?

A. No, I didn't.

5056 Q. I show you another letter dated August 12, 1962, to Mr. Fitzgerald from Mr. Ridings and ask you if you can identify this, what purports to be a letter, and ask you if you can identify that letter?

A. Yes.

Q. Did you participate in the preparation of that letter?

A. Yes, I did.

Mr. Owens: Ask that that be marked for identification.

The Court: Four hundred and eight.

(The letter referred to above was marked D408 for identification only.)

Mr. Owens: I'd like to read you Defendant's Exhibit No. 408. It is a letter dated August 21, 1962, addressed to Mr. P. H. Fitzgerald.

Mr. Rowntree: From whom?

Mr. Owens: From J. W. Ridings.

"Dear Mr. Fitzgerald:

"I am in receipt of your letters of July 25 and August 6, 1962.

"In your letter of July 25 you seem to have been suffering from hallucinations and time has proved that your fears were unfounded. The wildcat strikes that you feared did not take place. Certainly under our collective bar-
5057 gaining contract, the president of a local union has the right to voice protests to you or to anyone else when the contract is being violated.

"Many of the statements you make in the letter of July 25 are without foundation. At no time have I, or anyone else representing District 19, agreed with you to abrogate your memorandum of agreement of May 5, 1961, and August 31, 1961.

"In your letter of August 6, you take the position that you have the authority to determine what constitutes a grievance and we contend that this is a matter for joint negotiations and to be decided in joint conference; that you have no right to make unilateral decisions on the contract. You aver in your letter of August 6 that I have no right to raise a grievance unless it pleases you to agree with me.

"The only thing we agreed on was the National Bituminous Coal Wage Agreement, and the dispensation on contract working wages from the National Agreement on

construction work. I do not know why you insist on putting so much boloney and sarcasm in a letter as it has always been the contention of the Mine Workers that the best way to settle these grievances is across the bargaining table and not with a poison pen.

"I assure you that the United Mine Workers, from the local union to the International Union, are dealing
5058 with you in good faith, but by the tone of your letters there is a question in my mind if it is your honorable intention to do the same.

"I have been advised by the International Commission composed of George J. Titler and Carson Hibbitts that another meeting will be held regarding these matters between myself, the commission and the Allen and Garcia representatives at a neutral place, preferably Chattanooga or Knoxville, and bring these matters listed in your letter to a definite conclusion.

"Yours truly, J.W. Ridings."

I ask that that letter be admitted in evidence. I don't know whether I had moved the admission of those other letters or not.

The Court: Yes, all letters have been admitted.

(The letters previously marked D406, D407 and D408 for identification were received in evidence.)

Q. I hand you another document that purports to be a letter and ask you if you can identify that?

A. Yes.

Q. Did you assist in the preparation of that letter?

A. Yes, I did.

Mr. Owens: I ask that that be marked Defendant's Exhibit 409.

The Court: Four hundred and nine.

5059 (The letter referred to above was marked D409 and received in evidence.)

Mr. Owens: I will read D409. It is dated August 31, 1962, addressed to P. H. Fitzgerald from J. W. Ridings.

"Dear Mr. Fitzgerald:

"On Friday, August 24, 1962, I, along with International Board Members Carson Hibbitts and George Titler and Kenneth Combs, met with you and Mr. Poore in Room 818 of the Patten Hotel in an attempt to adjust certain grievances which are now pending between your company and the United Mine Workers of America regarding seniority rights of men on the Palmer panel, Local Union 5881, Palmer, Tennessee.

"After you had reached an impasse you promised us that you would confer with your superiors and call me by Wednesday, August 29, without fail, as to your position. To date I have not heard from you, and I requested the commission to return to again confer with you on this matter by Thursday, September 6, 1962, in order to protect the contractual relationship between your company and the United Mine Workers of America. Chairman Titler of the commission will contact you to determine whether or not this date is satisfactory to you immediately after Labor Day.

"Very truly yours, J. W. Ridings."

And ask that that be admitted in evidence.

Q. I show you another document that purports to
5060 be a letter from Mr. Fitzgerald to Mr. Ridings and ask you if you can identify that?

A. Yes.

Mr. Owens: Ask that that be marked for identification.

The Court: Four hundred and ten.

(The letter referred to above was marked D410 for identification only.)

Q. And I show you another letter and ask you if you can identify that letter?

A. Yes, I can.

Mr. Owens: I ask that that be marked for identification.

The Court: Four hundred and eleven.

(The letter referred to above was marked D411 for identification only.)

Mr. Owens: I read Defendant's Exhibit No. 410, which is a letter from Mr. Fitzgerald, dated September 4, 1962, addressed to United Mine Workers of America, Attention J. W. Ridings.

"Statement for loss resulting from wildcat strike September 4, 1962, $2,000.

"This billing is in accordance with my letter to Mr. J. W. Ridings of July 25, 1962. This wildcat strike resulted from a one-man picket line manned by Pascal Sissom
5061 of Local No. 5881, Palmer, Tennessee.

"Payment of the above amount is herewith demanded upon receipt of this statement."

Ask that that be admitted into evidence.

(The letter previously marked D410 for identification was received in evidence.)

Mr. Owens: And a letter, Defendant's Exhibit No. 411, which is a letter from Mr. Ridings to Mr. Fitzgerald, dated September 6, 1962, reads:

"Dear Sir:

"I have your letter of September 4, 1962.

"You have sent your bill to the wrong place.

"This office and the International Union did not authorize any work stoppage, and we did everything in our power to see that the stoppage was discontinued when it was brought to our attention. We understand the mine is now operating."

We ask that that be admitted into evidence.

(The letter previously marked D411 for identification was received in evidence.)

Q. I show you another document that purports to be a letter from Mr. Ridings and ask you if you can identify that?

A. Yes, sir, I can.

(The letter referred to above was marked D412 for identification only.)

5062 Mr. Owens: I'd like to read from Exhibit D412,

which is a letter from Mr. J. W. Ridings to Mr. Fitzgerald.

"Dear Mr. Fitzgerald:

"This is to confirm our meeting of last evening, September 6, 1962, at which time the following were present: Mr. George Titler, President, District 29, UMWA, Mr. Carson Hibbitts, President, District 28, UMWA, Mr. Kenneth Combs, Assistant Secretary-Treasurer, District 19, UMWA, District Representative Howard Madewell and myself representing the union. Mr. Gene Poore and yourself representing Allen and Garcia Company and Tennessee Consolidated Coal Company.

"Since you did not call me last Wednesday about a referee for the pending cases as you had previously promised, I opened the meeting by asking you if you could arbitrate the pending grievances. You then advised us that you had concluded there was nothing to arbitrate.

"Notwithstanding this we are prepared to arbitrate and submit the following named persons to you as a possible referee:

"Mr. A. H. Keally, 500 Cherokee Boulevard, Knoxville, Tennessee.

"Mr. J. Fred Holly, University of Tennessee, Knoxville, Tennessee.

"Mr. D. Grove Moler, Hullens, West Virginia.

"We shall appreciate an early reply."

5063 Signed, "J. W. Ridings." I ask that that be admitted into evidence.

(The letter previously marked D412 for identification was received in evidence.)

Q. I hand you a letter, a document that purports to be a letter from Mr. Fitzgerald to Mr. Ridings, and ask you if you can identify that?

A. Yes.

Mr. Owens: Let that be marked for identification.

The Court: Exhibit 413.

(The letter referred to above was marked D41 for identification only.)

Mr. Owens: Reading from Defendant's Exhibit 413 which is a letter dated September 11, 1962, from Mr. P. H Fitzgerald to Mr. J. W. Ridings.

"We have your letter of September 7, 1962, in which you submit three names of men you offer to arbitrate cases.

"Will you please advise us by return mail just exactly what cases you wish to arbitrate and why?

"We will then consider the men you submitted and offer men of our choice."

Ask that that be admitted into evidence.

(The letter previously marked D413 for identification was received in evidence.)

5064 Q. I show you another letter and ask you if you can identify that?

A. Yes, I can.

Mr. Owens: Mark that for identification.

(The letter referred to above was marked D414 for identification only.)

Mr. Owens: Letter from Mr. Ridings to Mr. Fitzgerald, dated September 14, 1962.

"This will reply to your letter of September 11, 1962.

"We are advised that Messrs. Pascal Scissom, Herbert Tate and Duncan Condra along with the Mine Committee of Local Union 5881 attempted to meet and discuss with you certain grievances on or about July 23, 1962, which these three men have. Upon being informed by you that you would not recognize or discuss their grievances, they contacted the District representative, and later in meetings with you and the International Commission, you reaffirmed your stand that you would not discuss these grievances.

"We stand ready to meet with you at any time and place to handle these grievances under the terms of the contract. The names of prospective referee previously submitted to you are our choice to hear and determine these grievances.

"We would appreciate an early reply."

Q. Do you know if you ever heard or got a reply
5065 from that letter?

A. To my knowledge we never did get a reply.

Mr. Owens: Ask that that be admitted.

(The letter previously marked D414 for identification was received in evidence.)

Q. Now, Mr. Pass, did you know that that mine subsequently closed down, Grays Creek No. 11 Mine?

A. Did I know that?

Q. It subsequently closed down?

A. Let's see, I don't recall if Grays Creek Mine closed down after September or not.

Q. Do you know that Allen and Garcia canceled their contract?

A. Yes, I do.

Q. Subsequently taken over by the Grundy Mining Company?

A. Yes, sir, I do.

Q. And there was a work stoppage then in December of 1962?

A. Oh, yes; yes, sir.

Q. Did you have anything to do with that?

A. No, sir, I did not.

Q. Did you ever engage in any picketing at Grays Creek No. 11 Mine or in that area?

A. No, I never did.

5066 Q. I want to direct your attention to the Tennessee Products and Chemical Company mine. Now, do you know if there was any disputes at the Griffith's Creek Mine during 1961 or '62?

A. Yes, sir, there was.

Q. That you were involved in?

A. Yes, sir.

Q. What is the first one?

A. We were involved in disputes on mines that they had opened up. When I say "they" I mean Tennessee Products and Chemical Corporation, and leased out to other persons

because of the failure of these companies that they leased their property to to pay the vacation pay and wages.

Q. Tell about that.

A. So the members and/or the mine committee got in touch with the field representatives of Southern Tennessee, George Gilbert, I believe, or Howard Madewell, I don't recall exactly which one, and the companies were approached about the vacation pay and the wages and they refused to pay.

The four or five mines involved shut down and weren't operating and I came down and I talked with the officers and the committee and I talked with Woody Travis, I believe, or Howard Human, I believe I talked with Howard Human, excuse me, on the situation and we weren't able to resolve anything.

5067 Q. What did Mr. Human have to say about this?

A. Mr. Human said that they wasn't going to pay it and he said to me that Tennessee Products didn't have anything to do with them at the time that I talked with him. Then a little later on I contacted the International Union and requested that they send a commission in.

Q. Before you get into that, did Mr. Human make any proposition to settle that dispute?

A. No, not that I recall, no.

Q. All right.

A. I contacted the International Union and requested that they send a commission in to help us get the matter straightened out. The commission came in and we talked with the officials of the company.

Q. Do you know who the members of the commission were?

A. Yes, John Kmetz, Hank Allai and Louie Austin.

Q. All right.

A. And we couldn't agree with the local management and neither could the local management agree with us.

Q. Who were you talking to again?

A. The local management, I was talking to Howard

Human, I believe Woody Travis was there, I am not positive, but Howard Human was there, I believe, a man was there, too, as I recall, by the name of Ralph Merryman,
5068 that's (spelling) M-e-r-r-i-m-a-n or (spelling) M-e-r-r-y-m-a-n.

Q. That's (spelling) M-e-r-r-y-m-a-n.

A. And we couldn't agree so the commission suggested that I call Mr. R. O. Baum (spelling) B-a-u-m, Baum, the president of the company, whose office was in Nashville, and see if we could get an appointment to meet with him on the problem and I did call him and talk with him and he did give us an appointment a day or so after the call was made and we went to his office in Nashville and when I say "we", I mean Mr. Allai and Mr. Kmetz and Mr. Austin and myself and met Mr. Baum and Mr. Merryman and explained our problem to them on the vacation pay and on the wages and cited the contract provisions and Mr. Baum said that he would let us know in a day or so.

So in a day or so, why, he called me and said for me to contact Mr. Merryman and I did contact Mr. Merryman and Mr. Merryman said that the wages would be straightened out and the vacation pay. They did straighten out the wages and they did pay the vacation pay.

Q. All right. Was there any other dispute in the Griffith's Creek mines?

A. Yes, there was a dispute in the Griffith's Creek mine at Max Condra's mine, which, by the way, is one of these mines that I just finished discussing.

Q. When was the vacation pay in dispute, do you
5069 know when that was?

A. Let's see, that was in, the best I can recall that was in August, I believe, of '58.

Q. Fifty-eight?

A. Maybe, I can't recall the year.

Q. All right. Did you have a dispute there over seniority?

A. In this area?

Q. In Tennessee Products mine?

A. Oh, yes, yes, sir.

Q. What?

A. We had a dispute on the seniority at the time th they opened these four or five mines that I just finish talking about.

Q. Was the vacation pay dispute after then?

A. The vacation, that's right, it came after that.

Q. All right. What was the seniority dispute about?

A. Well, the seniority dispute was that the compani had opened these small mines and were driving them mining coal toward the big mine, the Reel's Cove Mine, a the dispute arose, of course, that the members of our uni were fearful that these small mines would drive into t large mine and throw them out of employment and t committee had had several conversations with the compan about it and I was down here, I don't know if I cam
5070 particularly on that or just happened to be down, an I met with Mr. Travis, Mr. Daffron, several of the— not several but two or three of the operators involve along with the mine committee, and we agreed upon seniority understanding to protect the men in the Reel' Cove Mine on future mines that were opened and to protec their employment in the Reel's Cove Mine if they remaine there or if they, if vacancies occurred at the other mine that they would open.

Q. Did this dispute over seniority cause labor disputes shutdowns of these mines?

A. I don't believe that that seniority dispute caused shutdown. I think we got that settled, as I recall. I could be mistaken but I don't believe a shutdown on the seniority

Q. What you have described is already in the record, I think, the memorandum of understanding that was worked out, is that what you are describing?

A. That's what I just finished describing. Now, the wages and the vacation pay did cause a work stoppage.

Q. Well, I won't go into what the memorandum of under-

standing was because that is already in the record. Is there any other labor disputes or work stoppages that you participated in or took part in the settlement of on the Tennessee Products mines?

A. Well, we had one at Mr. Graham's mine that I
5071 recall.

Q. What was that about?

A. They had truck drivers hauling coal from his mine.

Q. When was this now?

A. This was right about the same time that this Griffith's Creek thing was up that you just mentioned, somewhere in that neighborhood and the seniority of the proper truck driver to be laid off was involved and Mr. Graham, according to the contention of the mine committee and our union, retained the youngest truck driver in seniority instead of the oldest one and it caused a strike and it caused a strike not only at his mine but it caused the Reel's Cove Mine to be picketed out.

Q. Who did the picketing?

A. The truck drivers did the picketing?

Q. Did the Mine Workers authorize this picketing?

A. No, sir; no, sir. So I finally got in contact with Mr. Graham and Howard Human and I believe when I finally got ahold of them they were in South Pittsburg and I met them.

I met them over at the office at Whitwell and we discussed the matter and finally agreed to arbitrate the grievance if I could get these men to go back to work.

Well, I got the men to go back finally and we agreed
5072 upon an umpire and the case was submitted to the umpire and a decision rendered.

Q. All right. Mr. Pass, have you agreed with any of the operators in Southern Tennessee, either on Consolidated property or Tennessee Products property, that they need not pay the full royalty into the Welfare Fund?

A. Absolutely not.

Q. Have you ever agreed that they not pay the wages provided for in that agreement?

A. Absolutely not.

Q. Do you know Mr. Lonnie Morrison?

A. Yes, I do.

Q. Did Mr. Morrison come to your office in Middlesbo and ask you if you would make another contract other th the National Agreement?

A. Mr. Morrison came to my office in Middlesboro a wanted me to agree with him that he could pay less wag than was provided for in that contract, that's what M Morrison wanted.

Q. What did you tell him?

A. I told him no, flat-footed no.

* * * * * * * * *

5074 CROSS EXAMINATION

By Mr. Rowntree:

* * * * * * * * *

5075 Q. Mr. Pass, back in the discussions in the sum
mer of 1955, about the vacation pay and the with
5076 holding of welfare royalty, is it not true that ther
were discussions in those meetings concerning th ability of the truck mine operators to pay these obligations

A. Only to the extent that they said that they couldn' pay it and they wasn't going to pay it.

Q. There were discussions about their financial ability under this contract?

A. Not at that meeting, no, sir.

Q. Are you denying that the subject of the ability of these operators to pay even the vacation money was not discussed at these meetings?

A. I ain't denying it, I am saying we didn't even talk about it.

Q. Didn't talk about it?

A. No, sir.

Q. Even the vacation —

A. (Interposing) No, sir.

Q. Pay of $140?

A. Except what I told you that they couldn't pay it and they wasn't going to pay it.

Q. Well, now, you say that there was a meeting in August some time, is that right, was that the first meeting?

A. Let's see; yes, yes.

Q. I will ask you did you not testify in a deposition already read in this case, reading at Page 24.

5077 "Question: Did the operators say that they didn't have the money or were not going to pay it?

"Answer: The question was asked by me what they were going to do about paying the vacation pay and Mr. Callis and Mr. Travis, in turn, advised me that they were not getting enough for their coal from TVA to pay these small operators so they could pay vacation pay, and I can't remember the sequence but we were advised by both the small operators and the two large companies as I have stated, that they could not pay it and were not going to pay it."

Is that not so?

A. That is true, yes, sir.

Q. All right, sir. And as a consequence of that you were willing to leave the withholding of royalties to await the making of a new sales contract?

A. No, sir; no, sir. The withholding of the royalty was not discussed until the evening that they were at George Gilbert's home and until we had the meeting in the Reel's Cove office and I accepted and agreed upon the best proposition that I could for the protection of our members and in order to get the full 40 cents paid into the Welfare Fund.

Q. Is it not true that the vacation pay was discussed along with the royalty?

A. The vacation pay in each instance was discussed first, in each instance, and then the royalty, yes, that

5078 is true.

Q. So is it not true that the ability of these operators was the thing that they were talking about?

A. Mr. Rowntree, the royalty was not mentioned at the meeting that we had at the old commissary building that you referred to a while ago. The only thing that was mentioned there was the vacation pay.

Q. But these matters were handled simultaneously at the time they were settled?

A. The vacation pay first.

Q. Yes.

A. And the royalty next, that is true.

Q. Now, you did know, did you not, that these people were working on existing contracts at the time that these withholding authorizations were executed?

A. I knew nothing about it. I assume you are talking about coal sale contracts?

Q. That is correct.

A. I knew nothing of their coal sales contracts except that I did believe, and I believe now, that they had the most of it, if not all of it, with TVA, but I had no facts at hand.

* * * * * * * * * *

5079 Q. And you settled them on the basis of a new sales
5080 contract when it would have been easily ascertainable when that time would arise?

* * * * * * * * * *

A. Well, to tell you the facts about it, Mr. Rowntree, I tried to make it effective immediately.

Q. Why could you not?

A. They wouldn't agree.

Q. And why did they not agree?

A. They just wouldn't agree.

Q. Well, you had considerable discussion about this?

A. There were a lot of discussion.

Q. Did they agree?

A. The first discussion that was, they'd tell us that they weren't responsible for the little operators, that was their

business. We kept trying to tell them that we knew that they were responsible because they controlled their TVA bids, the little operators couldn't sell any coal except through them and we knew they were responsible. They was a lot of discussion.

Q. Yes.

A. Then when we got down to where that they indi-
5081 cated before, they said new sales contracts, I took them up and we agreed on it.

Q. They were willing to do that but they never specified any reason for making it applicable to new sales rather than the old sales?

A. No, no, no.

* * * * * * * * * *

5107 Q. Now, going to the year 1960, do you recall the meetings concerning the effort to negotiate a contract based on productivity?

A. Who with?

Q. Tennessee Consolidated.

A. I don't recall of any meetings in 1960 to negotiate a contract. I recall of two meetings that were held between the officials of Tennessee Consolidated Coal Company and the officials of District 19 and the Mine Committee and officers of Local 5881 at Palmer in which there were dis-
cussions, considerable discussions about the Coal Val-
5108 ley Mine.

Q. And what was the purpose of the meetings?

A. Well, Tennessee Consolidated Coal Company had canceled the contract, I believe somewhere near January of 1960, and we met there at the Farragut Hotel in Knoxville, Tennessee, and the company was wanting us to agree with them on some sort of an arrangement on a productivity basis and we wouldn't agree with them. We told them that we believed that they could get the production necessary at that coal mine and they wanted to know what it was and they were told that they had a power shortage inside that coal

mine and every time that they had all of the machinery operating that they didn't have sufficient power for the cutting machines to operate and the loading machines to operate and that the equipment would break down and it would sit as long as a half a day, sit there a half a day before they could get the equipment repaired and that they didn't have sufficient supplies to repair the equipment inside of the mine where it ought to be and that when it was necessary to try to get this equipment repaired and had to send outside to get some supplies, that the company would have had to reverse their belt, you understand, from the inside out, so they could pick up the supplies and send it back in and they didn't want to do that for fear that they would lose the production of the coal that wasn't affected by the breakdown or by the power, not having enough power, that
5109 is, and they told us, and they told us that they planned to putting in a new sub-station over there close to increase their power.

Now, then we had another meeting in Chattanooga and the same people were present, as far as I can recall, for both union and company, and practically the same discussion was held and the same results occurred, no understanding.

Q. These people advised you how much money they had spent on this mine in the past two or three years trying to get it more productive, wasn't that discussed?

A. They could have told us and I guess they did, I can't recall it but I guess they did, but I know, too, that they was probably some discussion.

Q. And—

A. (Interposing) Of how many years that our people had put up in that mine over there, too, to make this money for them.

Q. Yes, sir.

A. And because of their failure to get enough power in that mine and because of the condition of their machinery

and because of not having proper parts and supplies shouldn't be laid on the backs of our people to place them on a substandard wage in a substandard living.

Q. You made all these decisions yourself?

A. No, no, sir, no, Buddy.

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5114 A. Because you say that don't make it that away. I have not even closely testified to that. It took more, it took increased power and enough power to operate machinery in a coal mine, it takes keeping the machinery at the face and getting the coal out and bringing it outside and it takes the proper repair on the machines to keep them operating and it takes proper supplies in the coal mine at the right place to where they can be accessible to get production of coal in any coal mine.

Q. Now, you knew that this mine was also not only facing adverse mining conditions during that period before 1960 but also this problem of absenteeism?

A. Yes. I don't know about their adverse mining conditions. I don't know what you mean by "adverse", but I do know that there was a question of absenteeism at this mine.

Q. And you came down here to talk to these men after Mr. Callis had talked to you about it?

A. Mr. Callis first talked to the officers and committee of the local, Mr. Roberts, and I don't know who got ahold of me to be down here, I don't know if it was him, I can't recall, or if it was the committee of the local or the field-worker, anyhow, I did come down.

Q. Now, you say that some of the men were talking about the "fair-haired boys" being the ones that were
5115 laying off. Who were these "fair-haired boys", can you give us some names?

A. They did not mention anybody's names and I will tell you why that this question arose. They told me that if we placed any penalty by agreement with the company on

the men for absenteeism that the people that would suff would be the people that weren't the most most guilty, th several of the bosses over there would let men lay off a lay off and lay off and never say anything to them.

Q. Well, now, just specifically?

A. I am telling you what they told me. You want, no you wait.

Mr. Combs: Answer the question. Let him answer t question. You asked the question. You asked the questio let him answer.

A. Then when we went in to meet with Mr. Callis and M Roberts and Mr. Morrison, I believe was there, I told the the same thing and then when we went to the bath hous to meet with the men I told them exactly the same thing.

Q. Well, now, here is another report you have gotte from somebody. Now, be specific on who these people wer that you talk about, the "fair-haired boys."

A. Well, now, let's see.

Q. Did you check up on it at all?

A. Let's see now, Mr. Rowntree, that was in 195
5116 or 1958, I believe it was 1958, yes, and they woul be no way in the world that I could recall to you th names of the "fair-haired boys", I couldn't even remembe that, that is impossible.

Q. Is there any designation that they gave you at all tha would help us to understand who these people were?

A. You mean what I mean by "fair-haired"?

Q. Yes.

A. That's a common terminology that is used among coal miners and refers to people that is a working in a coa mine that don't get the same discipline regardless of what it is as other people get. That is the best I can explain it

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5117 Q. Did you get a report that the absenteeism diminished and the situation improved after this talk?

A. Yes, from Mr. Callis and Mr. Roberts and from the best information as they advised me, the mine committee.

Q. Do you recall the date of this talk?

A. No, sir, I couldn't remember the date but I was down there.

Q. We have absenteeism reports here as Exhibit 281 and it would be the time at which the absenteeism improved, it would be that point there that you gave this talk, I take it?

A. Well, I have no access to their reports of absenteeism, I don't know who laid off, who didn't lay off. All I can testify to you is that Mr. Callis and Mr. Roberts told me so and they operate the mine.

Q. And they told you that a short time after this 5118 talk?

A. Yes.

Q. And do you know whether this talk was given before or after TVA had canceled the T4 contract?

A. I know nothing about the T4 contract.

Q. So you don't know whether or not you were invited to come down and help on that situation before or after the cancellation of the T4 contract?

A. No, I do not.

Q. Now, I take it that on this period of 1962 or '61 and '62 of Allen and Garcia that your problems with Allen and Garcia arose back there at the time shortly after this memorandum of understanding, is that true?

A. Well, the problem arose before or right at that time or before the memorandum of understanding. I am sure it arose before, started to arise.

Q. And it's your position, it's the burden of your testimony all through that whole period Allen and Garcia was unreasonable with respect to the hiring or the retention of men on machines?

A. It is my testimony that they were extremely unreasonable on training these people on that equipment as we

had agreed to and on giving people a reasonable opportunity to train to operate the machinery.

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5120 Q. Now, Mr. Pass, it seems that things got a little bit bitter between the Allen and Garcia Company and the District officers, is that not true?

A. No, the District officers didn't have any grievances with Allen and Garcia with the exception that we couldn't get them to process the grievances that arose under
5121 the provisions of the contract with any reasonable time to keep the thing going.

Q. Well, you wrote this letter February 21st about Mr. Callis being an unscrupulous person and so forth?

A. Yes, sir.

Q. This was just two days after you had fined the local union, wasn't it?

A. It could have been.

Q. And there's some personalities got into the thing, was this the problem, what was the problem?

A. The problem was that they had honorably agreed with us and put their signature on an agreement that they would train these men down there and provide employment for them under the provisions of that contract and that they would comply with that contract and they didn't do it and they wouldn't do it. It gets back to the contract machinery and the abiding by the contract by Allen and Garcia.

Q. That's what it was?

A. Their failure, their failure and inaction to carry out the memorandum that we agreed and to process the grievances that arose.

Q. And particularly with respect to—

A. (Interposing) To the contract.

Q. Particularly with respect to carrying the panel over to Grays Creek after the move from Coal Valley?

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5122 Q. That's right. But there was something hap-

pened about that time and was it not the bringing in of these men from out of the State?

A. I can't recall exactly what the question was at that time. I do know that I had considerable trouble a getting them to send the dues to the District office as they should.

Q. Well, going back to Exhibit D406, February 21, 1962, quoting, "On Tuesday, February 20, 1962, Allen and Garcia Company employed two men from Virginia as shuttle car operators."

A. Um-hmm.

Q. Your fine against the local was recorded February 19, 1962, the day before that. Now, isn't it true that the local union members on the Palmer panel were causing difficulties at the mines before that time?

A. The facts, Mr. Rowntree, that Mr. Fitzgerald and Mr. Poore had no regard, and I have heard them, for
5123 those people on that panel.

Q. Well, we will get to that on our rebuttal.

A. You asked me a question. If you refute me I have to answer it, but that's the facts about it and that's what created a lot of the turmoil and, you know, the men would go up to the mine to go to work and they wouldn't even speak to them, Mr. Poore, Mr. Fitzgerald, and they called that to my attention.

I said, "I will just tell you something, boys. What do you care whether they speak to you or not as long as you work in this mine and you get the wages that is coming to you and you work the hours and provisions of the contract? I wouldn't care whether they spoke to me or not if they didn't want to."

It got to be a sad state of affairs when men is working together and they wouldn't even do that.

Q. This was brand new equipment in this mine?

A. To my knowledge.

Q. And this was—

A. (Interposing) Allen and Garcia.

Q. This was fast, highly mobile equipment?

A. To my knowledge the loading machine, the shuttle car was new, I can't recall that any other equipment that they purchased that was new.

Q. And they had two of these units going, attempt-
5124 ing to put in a fourth crew, they were trying to get four full crews on this equipment?

A. Yes, that's true.

Q. And what was the average age of the Palmer panel?

A. I never did check it.

Q. And these men had no experience on that equipment?

A. Yes, that was recognized by Allen and Garcia before they started producing coal and recognized by us that they had no experience.

Q. And they were trying to be careful about safety and the health requirements, physical examinations and so on?

A. Well, I couldn't speak in the manner that you asked that question. I couldn't say that they were trying to be careful about safety and so forth because I wasn't in the mine and the only report that I would get would be from the United States Bureau of Mines and the State of Tennessee on mine inspections, so I couldn't say what they were trying.

Q. But you have already testified that some of these problems came from men who were being physically examined, who were having adverse reports on their examinations and so forth, is that right?

A. Now, you off of the safety thing, right?

Q. Well, I was talking about health and safety.

A. Oh, health and safety. While a man is working in the mines or before he goes to work?

5125 Q. Both of them.

A. Well, I know that before any coal company employs a man to go to work they are going to have him examined to see if he is physically fit.

Q. Why?

A. Under the Workmen's Compensation Act of the State.

Q. Isn't that particularly required under the mining laws?

A. I don't believe there is a section in the mining law, to my recollection, that requires a company to examine a man before they employ him.

Q. Well, isn't it a requirement of most mines that a man be in top physical shape before he goes underground?

A. I have never heard the word "top" used, but all companies have a standard of physical examinations that an employee must meet before they will hire him, some are lax, some are not lax.

Q. Isn't it true that the physical condition of a man and his ability on machinery affects not only himself but the men who work adjacent to him?

A. Certainly, absolutely.

Q. And does not a company have to have some leeway on making a selection of the men they are going to use on that equipment?

5126 A. Certainly.

Q. And isn't it within the prerogative of management to make a reasonable decision upon that?

A. Unless otherwise specified by agreement, such as the memorandum of understanding that we had with Allen and Garcia, the two of them, in fact, and then if a question arose as to whether or not that a man could learn to operate the equipment it was to come up under the grievance machinery, but they wanted to stall all of the time, Mr. Rowntree, they wanted to let all of the old cases get new and the new ones get old, now, it's just that simple.

Q. Is it not true that that memorandum of understanding left to Allen and Garcia the decision as to the ability of the man to operate the equipment?

A. No, sir.

Q. Do you mean the union took that right away from them?

A. The union didn't take nothing away from them.

Q. Well.

A. The union agreed with Allen and Garcia and Allen and Garcia agreed with the union that they would be a training program set up and they specified how it would be set up.

Q. Did that agreement not leave it to Allen and Garcia to make the decision as to the ability of the man to operate the equipment?

5127 A. Under the contract, Mr. Rowntree, the company makes the decision, if anybody on the panel feels that they have made the wrong decision he has got a right to take the case up. That wouldn't only be the memorandum, that would be the contract, the National contract.

Q. But that is—

A. (Interposing) In other words, they don't come to the committee or to the District and say, "Which man do you want?" This is Allen and Garcia talking, "Which man do you want us to take to run this shuttle car?"

That ain't the way it is done. They pick the man, then if somebody feels that they have picked the wrong man he takes his case up.

Q. Is it not true that one of the important prerogatives and duties of management is to maintain that equipment underground under the control of people who are capable of operating that equipment without doing damage to themselves or anybody around them?

A. We would always want that, yes, sir.

Q. And is it not true that this panel coming into this Allen and Garcia mine was at an average age of around 50?

A. I never checked it, Mr. Rowntree, I don't know.

Q. And is it not true that it would be reasonable to assume that with men who needed work but were of this

5128 age operating on fast mobile equipment with which they were unskilled and untrained that there was going to be some problems?

A. We recognized that we would have problems, that's

the reason we agreed to the memorandum of understanding to clarify those problems.

Q. And that's the reason that Allen and Garcia expressly reserved in that the right to determine and make the final say-so on the ability of the men?

A. You mean the final say-so without regard to the grievance machinery? You ask me that?

Q. The language of the agreement I am referring to.

A. You asking me?

Q. You are familiar with the language of the agreement?

A. Yes. You are asking me if they would have the right to the final say-so without regard to the machinery in the

Q. I am asking you about the language in the memorandum of understanding itself.

A. I don't recall what is in the language of the memorandum but I do know, I do know for a fact that if Allen and Garcia made a decision on the man and somebody else felt that they had made the wrong decision he has a right under the contract to take it up through the grievance

5129 machinery and they did when they would let them.

Q. Wasn't it true that they were having so many of these cases that the company just got in utter confusion because of all of the trouble of this panel and all the problems of these men 50 years of age or over trying to operate equipment in which they were unskilled, inexperienced?

A. The company put themselves in the utter confusion when they take men in there and barely let them get on a piece of equipment to learn to operate it and bring them back outside and say, "You are cut off," and not even make any effort to do it and they further got theirselves in utter confusion when they wouldn't process the cases within reasonable time under the grievance machinery of the contract and they further got under utter confusion when they checked the dues off of our people, take it out of our pay envelope and not even send it to the District office in accordance with the provisions of the contract.

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5133 Q. Don't you recall, Mr. Pass, that Mr. Ridings came to an understanding with Mr. Fitzgerald that the company would make one more try and move to Grays Creek and expend all of the money necessary to do that on the understanding that the Palmer panel would not be carried to Grays Creek except for that initial working crew which were named and that on this understanding the Board of Directors of Tennessee Consolidated made the decision to make this one more effort and the TVA permitted the substitution of a Grays Creek Mine in place of the old Coal Valley Mine on the contract, don't you recall that?

5134 A. Well, I will try to answer them several questions you asked. First, I don't know anything about the TVA contract and its business with the Tennessee Consolidated Coal Company.

Second, to my knowledge there was never any agreement between District 19 and the union and Allen and Garcia Coal Company to disregard the panel of the Coal Valley men going into Grays Creek.

Three, Mr. Fitzgerald and Mr. Poore agreed with us that any mine that they opened on Tennessee Consolidated Coal Company, the agreement being incorporated in the memorandum of understanding, that the same arrangements would apply. There has never been any change.

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5147 WILLIAM J. TURNBLAZER,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rayson:

Q. Would you state your name, please?

A. William J. Turnblazer.

Q. Where do you live, Mr. Turnblazer?

A. Middlesboro, Kentucky.

Q. Are you employed by District 19, United Mine Workers of America?

A. Yes, sir, I am president of District 19, United Mine Workers of America.

Q. How long have you held that position?

A. Since April the 1st, 1963. Prior to that I was acting president from December 1st, 1962.

Q. Were you employed by District 19 prior to becoming president?

A. I was employed by District 19 since February 1st, 1947.

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5148 Q. Mr. Turnblazer, in your employment as an attorney and later as president of District 19, have you had occasion over the years to be in the southern Tennessee coal fields?

A. Yes, sir, I have on numerous occasions.

Q. Will you explain to the Court just what your work was, let's say during the 1950's, what would be the occasion for you to come to southern Tennessee and other coal fields, for that matter?

A. Principally at that time, why, I was handling
5149 the compensation work for members and also in the field of unemployment compensation and claims for benefits under the Social Security Act, we helped many of our members on their claims for social security benefits.

Q. Do you recall the period of the strike in the southern Tennessee fields in 1955?

A. Yes, sir, I was down here during part of that time on one or two occasions.

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Q. Now, you say you were down here on some unemployment compensation matters?

A. That is true.

5150 Q. Will you explain what those were?

A. Our members.

Q. And how they turned out?

A. Our members filed claims for unemployment compensation because of the fact that they were out of work and we felt that under the law they were entitled to those benefits and that it was later determined that they were entitled to those benefits.

Q. Did you insist or did District 19 insist as a condition to ending the strike that occurred during that period that the truck mine operators or any of the other operators would draw any resistance to the payment of unemployment compensation?

A. We had the hearing set for or a hearing was set at Jasper in early November, we were ready for trial and at that time the Board of Review of the Department of Employment Security was present and at that time a stipulation was entered as to the facts of the dispute and it was submitted to the Board and later on they gave a decision in favor of the coal miners.

Q. Well, did you insist that the operators enter into such a stipulation as a condition to terminating the strike?

A. No, sir, we were there ready for trial.

Q. All right, sir. Did you have occasion to attend
5151 any meetings of local unions during the period of that strike?

A. I attended one meeting either in early October or late September.

Q. What was that meeting?

A. It was a meeting at the Whitwell High School and in attendance were members from two or three different local unions that were involved at that time in the vacation pay dispute.

Q. Can you tell us what transpired at those meetings?

A. Well, there was discussion from the floor, different individuals wanted to take one route as to how to collect their pay, some wanted to file individual lawsuits, some wanted to use other methods and finally it was decided at the meeting that they would try their best to work out some agreement with the two big companies whereby they would

guarantee the vacation pay on a monthly proposition so that when vacation time came around the next year that there would be money for the men to take their vacation.

Q. Was there anything else that you recall that was discussed at those meetings?

A. Oh, possibly there was other things discussed but that was the principal item at that time.

Q. Mr. Turnblazer, after 1955, do you recall
5152 having participated in any other negotiations or discussions with the coal operators of southern Tennessee up to 1960?

A. I was probably in some meetings with them but I don't recall of anything in particular.

Q. All right, sir. Do you recall a labor dispute that occurred at Grays Creek commencing in August of 1960?

A. Yes, sir.

Q. Involving the Grundy Mining Company?

A. Yes, sir, I believe that that occurred sometime in the middle of August and I came down here and made an investigation and charges had been filed with the Labor Board and I had been instructed by Mr. Ridings to inform the members who were conducting picketing in that area to refrain from mass picketing and that they were not to engage in any violence or any threats of violence.

Q. Do you recall when you came down here during that period?

A. It was two or three days after the occurrence, which I believe was either the 15th or the 16th of August, in other words, we were here the 20th of August or the 22nd.

Q. You were down here on more than one occasion?

A. Yes, sir, several occasions until those charges were heard and disposed of.

Q. Were you one of the attorneys representing the miners in connection with those charges?

5153 A. I was.

Q. Did you have a meeting with any of the officials or members of the local union involved?

A. Yes, sir, we met with the officials and the members o Local 5881 at Palmer and gave in detail the instruction that Mr. Ridings requested that I give them.

Q. Did you at any time observe the picketing at Gray Creek?

A. I believe that I was there on one occasion to get som statements or get the men to come and make statements i preparation for the Labor Board examiner who was here i that area at that time.

Q. Was there mass picketing going on when you wer there?

A. No, sir. There was three or four men there at th intersection of Grays Creek and the Pocket Road.

Q. Were there any officers of the company there?

A. I believe I saw one of the officials of the company there in that area at that time.

Q. Who was that?

A. Mr. Roberts.

Q. What was he doing?

A. I think he was just talking to the people involved there.

Q. All right, sir. Do you know if any complaints
5154 were registered with the district at any time after you investigated this matter in connection with the picketing at Gray's Creek?

A. None whatever.

Q. Do you know any incident of violence that occurred at any time after you investigated that matter?

A. I don't believe there was a single one.

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Q. Mr. Turnblazer, do you recall when the Coal Valley Mine reopened on the Tennessee Consolidated property in 1961?

A. It was sometime in May or early June of 1961 that they started the rehabilitation work.

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5155 Q. Did you ever meet with any of the officials of the mining company, be it Grundy or Tennessee Consolidated and Allen and Garcia during the year 1961?

A. I don't believe I did.

Q. All right, sir. Did you meet in Washington, D.C. in the fall of that year or November, I believe it was, at which time some matters were aired out over developments?

A. I believe that that was either in November or early December. I did attend a meeting at Washington with the officials of the Allen and Garcia and some of the district officers and local union officers.

Q. Were there also certain officers of the International Union present at this meeting?

A. Yes, sir; yes, sir, several of them.

Q. Will you tell us what transpired at that meeting?

5156 A. The Allen and Garcia people talked on the question of the training program and that the men there were not qualified to do the work and the local union officers and the district officers talked on the fact that the men were able to learn to do this work and that some of them had made them already good men, which they admitted, and as a result of that meeting, why, I think there was better relationships.

We came back and we talked further with the local union and the members thereof and for a period of time there got along pretty good with them.

Q. Were you involved in any of the meetings that occurred in connection with Allen and Garcia or Tennessee Consolidated Coal Company or Grundy Mining Company during the months that followed prior to the closure of the Coal Valley Mine?

A. No. I think that mine worked — well, it didn't work out — I think they had some bad rock falls and it was abandoned sometime in early June of 1962, but I didn't par-

ticipate in any grievance meetings or anything of tha nature prior to that.

Q. All right, sir. Did you participate in a meeting o or about June 18, 1961, at which the possible opening o Grays Creek No. 11 was discussed?

A. Yes, sir, I attended with Mr. Ridings and—

5157 Q. Where was that meeting held?

A. It was held in the Palmer office of the Tennessee Consolidated Coal Company at seven o'clock in the morning.

Q. Did you come down for that meeting that morning?

A. We did. We left up at Middlesboro about three o'clock in the morning.

Q. Had you talked to Mr. FitzGerald about the arrangements for the meeting?

A. No, sir. The only person that told me about the meeting was Mr. Ridings and he asked that I come along with him and I did and I think we met Mr. Madewell and the mine committee and the chairman of the local union also *also* attended that meeting.

Q. Who was present on behalf of the company?

A. Mr. FitzGerald was there and Mr. E. B. Poore, and, I believe that they was another, either Mr. Bradley or Mr. Kennedy, who was with Allen and Garcia.

Q. What was this meeting about, Mr. Turnblazer?

A. Mr. FitzGerald indicated that they had already decided to open up a mine on what was known as Grays Creek and that they had already posted a notice and said that 21 men would be employed at that mine.

Q. Were you familiar with that notice at the time of the meeting?

5158 A. I think he disclosed that at the time.

Q. Did he show you a notice or give you a list of names?

A. Yes, sir, he showed or gave a list of the names Mr. Ridings said he had already posted on the bulletin board on the outside.

Q. All right, sir. Proceed.

A. Well, he indicated that he had already called those men and was going to open that mine and, of course, that created some apprehension on the part of the committee that he was not going to comply with the memorandum of understanding.

Q. Let me ask you now, you say there was some 21 names posted?

A. Yes, sir.

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Q. Had these men worked for the company prior to that time?

A. Those 21 men had worked in the Coal Valley Mine on the equipment which was installed by Allen and Garcia.

Q. Were these among the men who had just then concluded their work at the Coal Valley Mine?

A. That is correct.

Q. Do you recall how many had been employed at
5159 the Coal Valley prior to the falling in of that mine?

A. I believe they had got up to somewhere in the neighborhood of 40 some men or maybe 50 some.

Q. All right. Mr. Turnblazer, you say that Mr. Fitz-Gerald was discussing the fact that he had called these 21 men, that there was some apprehension on the part of the local union?

A. (Witness moves head up and down.)

Q. Was there anything else gone into at that time?

A. Well, he wanted the union to agree upon the construction rate, in other words, he wanted to pay $1.75 an hour to recover the equipment out of the Coal Valley Mine and move it over to the Grays Creek area and commence with development of the new mine at $1.75 an hour and, of course, there was some discussion on that and he indicated that he had to know immediately, that he was going on to Nashville, whether or not the men would agree to that $1.75.

Q. Let me ask you this, getting back to those 21 men, were these men called in the order of their seniority at the Coal Valley Mine?

A. I couldn't state whether they was or not but we advised him that if there was anybody that felt like they had a grievance that was not one of those 21 men, the balance of the men that was at Coal Valley, if they felt they had a grievance, certainly we was going to look into
5160 that, we wasn't waiving any rights that those men had under the contract or under that memorandum and he said that he had to know by eleven o'clock, or something like that and he left and went to Nashville.

Q. What specifically did he want to know, Mr. Turnblazer?

A. He wanted to know whether or not the men would accept the proposition to work there at $1.75 an hour on this construction rate and whether or not they would be better relationships made at the Grays Creek Mine than what they had there at Coal Valley, and we, Mr. Ridings and myself, told them that we would do everything that we knew to do to see that they had harmonious relationships and we felt that they would, if they would carry out their part of that contract.

Q. Did you tell him that you would recommend the construction rate of $1.75?

A. We said we would take it up in the local union and that would be our recommendation, that the men do that because that is the only way they was going to get a place to work, that they had to develop a new mine before they could have jobs for those men that were displaced at the Coal Valley.

Q. Did you tell him that you would make any recommendations or that you would discuss with the local
5161 membership the matter of his selection of these 21 men?

A. I don't recall that we said anything about that other

than if somebody felt they had a grievance that we would have to proceed under the terms of the contract.

Q. Did you discuss with him the matter of waiving or foregoing the right of the men, the other men who had worked at the Coal Valley Mine prior to its closure in that month or with respect to the rights of the other men on the Coal Valley panel, did you discuss those matters with Mr. FitzGerald that morning?

A. No, sir, we didn't discuss those matters and certainly they had entered into that memorandum of understanding in writing and it had always been practiced there, not only that mine, but other mines in the area, that when men was displaced by new mechanical equipment they became panel members and they was entitled to the jobs as they came open, provided they could qualify for those jobs.

Q. Do you know whether this had been done previously over the years at this very company?

A. It had been done by that company to my knowledge since 1947.

Q. Did Mr. FitzGerald ask you to forego any rights with respect to the Coal Valley panel?

A. I don't think that he did, if he did I just don't recall it.

5162 Q. Did you thereafter meet with the local union after this meeting with FitzGerald?

A. We did.

Q. When did you meet?

A. We meet approximately nine o'clock, I guess, in the morning.

Q. Do you know if that was a specially called meeting for that purpose?

A. No, I don't know whether it was a specially called meeting but it was well attended, so I imagine it was a specially called meeting.

Q. Can you tell us what transpired at that meeting?

A. Well, the proposition was discussed with Mr. Ridings

that they could open discussion and several of the men there was dissatisfied with it and one man in particular said that that was not even the going rate for common labor on highway construction and certainly working underground was more dangerous and that he wanted no part of it, but finally, why, it was decided to accept the $1.75 rate hoping that in doing so that would make a mine there where those men could have employment.

Q. Did you ask that local union if it would forego its panel rights at this mine to be opened up, the Grays Creek No. 11?

A. No, sir, we did not.

5163 Q. Was that discussed at the local union meeting?

A. It was not.

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Q. Were you down in the southern Tennessee area on any matters pertaining to Tennessee Consolidated during that summer or thereafter, Mr. Turnblazer?

A. I believe the next time that I had any dealings was in September when we filed a petition, a representation petition with the Labor Board.

Q. Before we get into that, let me ask you if during the summer of 1962 certain contracts you had or contracts you had with certain truck line operators were canceled.

A. That is correct. Starting in August of 1962, the district gave 60-day notice of termination of contracts to certain of the operators on the property of Tennessee Products and Tennessee Consolidated Coal Company.

Q. Did you participate in the making of the decision to cancel those contracts?

A. Yes, sir.

Q. Will you explain why those contracts were

5164 canceled?

A. Those contracts were canceled because the operators involved had indicated that they were not going to comply with the contract in many respects, such

as the payment of the royalty to the Welfare and Retirement Fund, and I think again they failed to pay the vacation pay in June of 1962, and that there were other questions. They refused to remit the dues at some of them, not all of them but some of them refused to remit that they had checked off from the employees and it was determined that we would cancel out those contracts to see if we couldn't get them to sit down and negotiate successor contracts.

Q. Do you know whether many of the truck mine operators, including some of those involved in this litigation, were publicly taking the position that those contracts were invalid and of no legal effect.

A. They certainly were.

Q. Did that occur in litigation in this court?

A. It did.

Q. When was it that you say these notices of termination were made, as you recall?

A. I believe they were made, some of the terminations, along about the 15th of August, 1962.

Q. All right. Do you recall whether or not certain hospital cards that some of the men held that had been
5165 issued by the United Mine Workers Welfare and Retirement Fund were canceled as of that time?

A. They were canceled along sometime in August.

Q. Were you advised of the reason of such cancellation?

A. We received a copy of the letter which was sent to all of those operators stating the reason that the benefits had been canceled.

Q. What was that reason?

A. That it had been determined by the trustees of the fund that the operators had flagrantly violated the contract with respect to the payment of the royalty on coal produced for use or sale.

Q. Did you have a meeting with area coal miners during the late summer of 1962?

A. Yes, sir, we had a meeting, a joint local union meeting over at the Whitwell High School.

Q. What transpired at that meeting?

A. At that meeting, why, there was a general discussion by myself and others relative to these cancellations and the people had been hearing all types of rumors and we wanted to be able to tell our people the exact thing that happened and the reason. That was the reason for that meeting.

* * * * * * * * * *

5166 Q. Did you participate in certain meetings, Mr. Turnblazer, that took place during the summer of 1962 between Mr. FitzGerald and Mr. Madewell and Mr. Ridings concerning certain grievances that the membership sought to assert at the Grays Creek No. 11 Mine?

A. No, sir, I didn't attend any of those meetings.

Q. Were you advised that such meetings occurred?

A. Yes, sir, they were, when they were filed they did occur.

Q. Did you review with Mr. Ridings certain letters that were sent to him by Mr. FitzGerald?

5167 A. Yes, sir.

Q. One of them is dated July 25th and one dated August 6th?

A. I did.

Q. Do you know whether Mr. Ridings went to see Mr. FitzGerald after receiving one of those letters?

A. Yes, sir, he attended—

Mr. Rowntree: (Interposing) Object to the hearsay.

The Court: Well, I am unable to determine really whether it is hearsay or not at this time. He may or may not have personal knowledge of whether the meeting was held.

Q. Do you know whether Mr. Ridings went to southern Tennessee for that purpose?

A. Yes, sir.

Mr. Rayson: I might say this, your Honor, I believe one

of the letters that the plaintiffs have introduced showed that there was a meeting prior to the letter of August the 6th.

Q. Mr. Turnblazer, did you assist Mr. Ridings in the preparation of a letter which he wrote in reply to those two letters that Mr. FitzGerald had written to him?

A. Yes, sir, I helped Mr. Ridings prepare letters along about that time.

5168 Q. Do you recall that on or about August 21st you received or that there was mailed a notice of cancellation of the United Mine Workers contract by Allen and Garcia?

A. Yes, sir.

Q. Thereafter did you prepare for Mr. Ridings' signature a petition for certification to file with the National Labor Relations Board?

A. I did.

Q. I will hand you this, what purports to be a copy of that petition, and ask you if that is the petition which you filed.

A. Yes, sir, it is.

Mr. Rayson: Your Honor, that has already been introduced in evidence as one of the two petitions filed as Plaintiffs' Exhibit 398.

Q. Did anything occur after that exhibit or after that petition was filed, Mr. Turnblazer, in connection with the Labor Board?

A. Two or three days later an unfair labor practice charge was filed by Allen and Garcia through their attorney, Mr. Judson Harwood.

Q. I show you this charge and I will ask you if that is the copy of the charge that you received from the Board.

A. Yes, sir, it is a copy.

5169 Mr. Rayson: We ask to introduce this in evidence as an exhibit to Mr. Turnblazer's testimony.

Mr. Rowntree: Let me look at it.

The Court: No. 415.

(The charge referred to above was marked D-415 and received in evidence.)

Q. Mr. Turnblazer, what bargaining unit of employees were you seeking to be certified for at the time you filed this petition for certification?

A. Grays Creek No. 11 mine of Allen and Garcia.

Q. Was it your purpose to have an election at as early a date as was practical?

A. Yes, sir.

Q. Had you had any negotiations with the Allen and Garcia company at that time for a successor contract?

A. No, sir.

Mr. Rayson: We desire to read the first paragraph of this charge, your Honor, or rather it's the third paragraph of this charge:

"Petitioner was a party to the National Bituminous Wage Agreement at a different mine which has been closed, and after commencing operations at its present mine, with employees of United Mine Workers of America, petitioner gave a 60-day notice of cancellation of its contract as required in Section 8 of the Act, and respondent, United
5170 Mine Workers of America, is in violation of Section D-4 of Section 8 in that it is refusing to permit employees of petitioner to work by use of force and threats of force."

Q. What happened after that petition was filed with respect to the proceedings on your petition for certification?

A. Well, filing the charge blocked the processing and we received a notice that the hearing was to be had, but then later it was postponed indefinitely.

Q. Because of this charge that was filed?

A. Because of the charge that was filed.

Q. I show you a paper and I will ask you if that was the order of the Board delaying the hearing for reason of that charge?

A. Yes, sir, it is.

Mr. Rayson: We desire to offer that as Exhibit D-416.

(The order referred to above was marked D-416 and received in evidence.)

Q. What happened to Mr. Harwood's charge against the United Mine Workers?

A. It was later withdrawn by Mr. Harwood.

Q. In other words, there was never a hearing. I am referring now to Exhibit D-415.

Mr. Rowntree: Is that the order withdrawing it?

5171 Mr. Rayson: No, it is not. This is the charge. I don't have a copy of the order withdrawing it.

Mr. Rowntree: We cannot stipulate on the date of that in the absence of the best evidence.

Q. Do you recall the date on which the charge was withdrawn?

A. It was early in October.

Mr. Rowntree: Early in October?

The Witness: October the 5th, but I am not positive of that.

Mr. Rowntree: Well, I am certainly not advised. Do you have the order or do you have the motion to withdraw?

Mr. Rayson: I have neither.

Q. Have you ever had it?

A. I have never had it.

Mr. Rowntree: We object on the best evidence.

Mr. Combs: I think, your Honor, we have shown the best evidence, the witness never had it and we have never had it. He knows it is withdrawn because he was informed of it.

The Court: Well, I don't believe that would satisfy the best evidence requirements unless it would be shown that it is not available for some reason.

Mr. Rowntree: Certainly the defendant was a party.

5172 Q. Mr. Turnblazer, I show you another order and I will ask you what that is.

A. This is an order rescheduling the hearing.

Q. Was that the hearing on the petition for certification which you have filed?

A. Yes, sir.

Q. Which you had filed on September 10, 1962?

A. That is correct.

Q. Do you know whether or not Mr. Harwood's charge had been withdrawn prior to the time that you obtained that order?

A. No, sir, it hadn't been withdrawn. This order is dated the 25th day of September, 1962, and it schedules the hearing for October 11th.

Q. You don't know whether or not Mr. Harwood's charge had been withdrawn at that time?

A. I don't know.

Q. All right, sir. But, in any event, the petition for certification was rescheduled?

A. That is correct.

Q. Apart from whether Mr. Harwood's charge had ever been withdrawn did it ever come on for hearing, Mr. Turnblazer?

A. There was never any hearing held on that particular petition.

5173 Q. All right, sir.

A. Or on the charge either.

Mr. Rayson: All right. We offer this order rescheduling the hearing as the next exhibit in the case and will point out that the hearing was rescheduled for October 11, 1962.

The Court: Exhibit 417.

(The order referred to above was marked D-417 and received in evidence.)

Q. At or about this time, Mr. Turnblazer, were you advised that Allen and Garcia had ceased its work as operating manager for Tennessee Consolidated Coal Company?

A. I believe we learned that along about October the 10th.

Q. Did you thereafter file an amended petition for certi-

fication with the National Labor Relations Board for the same bargaining unit of employees for which you had sought to be certified on your petition of September 10, 1962?

A. I believe we did and I believe it was filed about October 14th.

Q. All right. I will show you a copy and I will ask you if you will note on that copy that the date on which you filed that petition—

A. (Interposing) According to this copy, this petition was filed, amended petition was filed October 13,
5174 1962.

Mr. Rayson: All right, sir. Your Honor, this petition is also in evidence as part of Plaintiffs' Exhibit 398.

Q. Mr. Turnblazer, do you know whether there was any activity in the area at that time with respect to opening other mines in the Grays Creek area, that is, mines other than Grays Creek No. 11?

A. Yes, sir, we received that information at the meeting we held, I think along about August the 24th or 25th, we heard at that time that the small mines were being opened on the property of Tennessee Consolidated Coal Company.

Q. Do you know whether or who was opening these mines according to your information?

A. According to our information it was the Grundy Mining Company.

Q. Apart from who it was, did you receive or did the union receive any request with respect to panel employees or panel employees to be employed at those mines?

A. No, sir, we didn't. In fact, there was some confusion as to actually who was running those mines. Some of the reports was that it was Grundy, some reports it was Tennessee Consolidated, some reports that it was Howard Higgins or Willis Flynn or some of the other people that had formerly operated mines in the Pocket because
5175 they were the ones that were picking up the men or securing the men to work there.

Q. Do you know where these men were employed?

A. They were employed by Mr. Bill Ables on behalf of Grundy Mining Company.

Q. Do you know whether any of your panel employees, that is, on the Coal Valley panel, were engaged or offered employment or work?

A. No, sir, they were not.

Q. Do you know whether there was picketing with respect to the opening of these mines?

A. I was so advised.

Q. Were you notified of certain picket line activity or was your office notified of certain picket line activity on or about the 5th or 6th day of October by Mr. Ables?

A. Yes, sir, we were.

Q. I will ask you if this is a copy of the telegram which was sent to Mr. Ables by Mr. Ridings on that date.

A. Yes, sir.

Q. Do you know whether that picketing closed the Grays Creek 11 mine and certain Pocket mines?

A. Yes, sir, it did.

Q. I show you some other telegrams and I will ask you if you will explain what they are.

5176 A. One telegram is addressed to Mr. Waldon Shrum, president of Local Union 5881, Tracy City, Tennessee; one is addressed to Mr. Bryan Parmalee, financial secretary, Local Union 7083.

Q. Do you know that these telegrams were sent?

A. Yes, sir, they were sent.

Mr. Rayson: We desire to offer these telegrams, your Honor, as a collective exhibit to Mr. Turnblazer's testimony.

The Court: 418.

(The telegrams referred to above were marked D-418 and received in evidence.)

Mr. Rayson: I'd like to read those to the Court. One of them is addressed to Mr. Ables, attorney for Grundy Mining Company, Incorporated, Tracy City, Tennessee.

* * * * * * * * * *

Mr. Rayson: Dated October 6th, 1962. All of them are dated on that date.

"Picket line on property of Grundy Mining Company is unauthorized by United Mine Workers of America. Every effort being made to get pickets removed."

Signed, "J. W. Ridings, President, District 19,
5177 UMWA."

Another one was addressed to Mr. Waldon Shrum, President, Local Union 5881, UMWA, Tracy City, Tennessee.

"District and International Union distressed to learn employees of Allen and Garcia Company are on strike in violation of contract. Officers of local union are urged to exert every effort to restore mine to immediate operation and process any grievances under terms of the contract."

A similar telegram was sent to Mr. Parmalee.

Q. Did you go to southern Tennessee with Mr. Ridings after these telegrams were sent, Mr. Turnblazer?

A. Yes, sir, I did.

Q. When did you go?

A. The following Sunday.

Q. Do you recall what date that was, was it around the 7th or 8th of October?

A. The next day or two afterwards.

Q. What did you do when you got there?

A. We came to Chattanooga and met with the local union officers of those two local unions and the members of the mining committee of those two local unions and had a long discussion with them, attempting to get them to go back and recommend to their members that they return to work and work out the balance of the term of the contract.

Q. What was the problem existing at that time?

5178 A. The big problem at that time was that the companies, particularly the No. 11 mine, the Allen and Garcia people was refusing to recognize the mine committee. They were refusing to check off union dues and the

other mines, the Pocket Mines, they were refusing to remit the union dues and various other complaints.

We talked to them for over two hours and it was then agreed that they would go back and recommend that their men return to work.

Q. Did you or your associates in District 19 call that strike or had you told those men to go out on strike?

A. We had not.

Q. Was it a simple matter for you to get the men to agree to return to work?

A. No, sir. We spent the biggest part of all day Sunday with them out here at the airport.

Q. Were you successful in persuading them to return?

A. I think two or three days later they, the Pocket Mines returned to work and then about a week later the Grays Creek No. 11 returned to work.

Q. Do you know whether any of the officials of Grundy Mining Company or Allen and Garcia or whoever it was at that time were called that very Sunday and told whether or not the men would return to work?

A. Mr. Ridings called Mr. Callis and he called a
5179 man by the name of Bradley, who was mine foreman up there.

Q. Do you know what he told them?

A. He told them that the local union officers had recommended that the men return to work and he felt like they would be ready to go to work the next day.

Q. All right. Do you know whether that mine was opened the next day or not?

A. It was not opened because the company failed to open it.

Q. Did you have a meeting in Nashville on October the 10th?

A. Yes, sir.

Q. Who participated in that meeting?

A. Mr. Ridings and myself and Mr. Judson Harwood and Paul Callis.

Q. How did that meeting come about?

A. Mr. Ridings stayed in Chattanooga and I went on to Nashville on that Sunday night previous to October the 10th and he called me and said that Mr. Callis wanted to meet at Mr. Harwood's office, for me to call Mr. Harwood and see when it would be convenient, and I did call Mr. Harwood and made the appointment and we met there on the—I believe it was around noon on October 10th.

Q. What transpired at that meeting?

A. There was a general discussion. The first thing
5180 was they indicated Grundy Mining Company was not under any contract and would not come under any contract.

Q. Did they tell you who was operating the Grays Creek No. 11 at that time?

A. They said at that time that the Grundy Mining Company was operating Grays Creek No. 11 and Allen and Garcia had withdrew.

Q. You say they took the position that they were not under contract?

A. That is correct.

Q. Is there any further—

A. (Interposing) Later on in the discussion they said that they would honor that contract for the balance of its term, which run to about October 24th.

Q. Was that understood at that time to be the end of the 60-day notification period?

A. I think that there was some question on that, I believe he said it was the 21st, but, anyhow, later both parties agreed that it would be the 24th.

Q. The 60-day period ran out on that day?

A. A day or two later. We had some correspondence.

Q. All right.

A. That indicated it was the 24th.

Q. Now, was there also a discussion at this meeting between you and Mr. Ridings and Mr. Harwood and
5181 Mr. Callis with respect to the opening of the mine

or the return of the men to work in connection with this strike that had started on the 6th or 7th?

A. Mr. Ridings told Mr. Callis that the men was ready to go to work and that he would like for them to operate the mines and he said that there was some difficulty that had occurred in Palmer.

Q. Who said that?

A. Mr. Callis. Some of the mine foremen had been involved in some difficulties the previous Saturday night and, of course, that was a matter we had nothing to do with we knew nothing about what had happened and certainly we told them that was a matter for the civil authorities, that the men was ready to work and hoped they would re open their mines.

Q. Did you thereafter assist Mr. Ridings in the preparation of a letter to Mr. Callis mailed also on October 10, 1962?

A. Yes, sir.

Q. Is that a copy of that letter?

A. Yes, sir, this letter was prepared over in Nashville.

Mr. Rowntree: May we see that? Are you going to put it in?

Mr. Rayson: Yes. We offer that as an exhibit

5182 to Mr. Turnblazer's testimony.

The Court: Exhibit 419.

(The letter referred to above was marked D-419 and received in evidence.)

Mr. Rayson: I'd like to read that letter to the Court. It is dated October 10, 1962, addressed to Tennessee Consolidated Coal Company and Grundy Mining Company, Tracy City, Tennessee, attention Mr. Paul D. Callis.

"At the conference this morning which was attended by your attorney, Mr. Harwood, and Mr. Turnblazer and myself, we discussed the situation at your Grays Creek Mine.

"You pointed out that Allen and Garcia was no longer operating the mine but that Grundy Mining Company was. You stated that Grundy considered itself bound by the

Allen and Garcia UMWA Agreement for the balance of its term.

"The work stoppage of last week at the Grays Creek Mine was discussed. I advised you that on Sunday I and others met with some of your employees. Prior to that meeting we had notified the men and the company that the stoppage had not been and was not authorized. At the meeting we urged the men to return to work and, on that night, they agreed to do so. I notified you and Mr. Bradley of this Sunday night. Thus far you have not seen fit to re-open the mine.

5183 "We will, as we have on this occasion and have always in the past, urged all of our members at your mines to remain at work at the direction of the mine management and if they have any grievance to process them through the grievance authority of the contract.

"We believe that the employees will honor the contract and we will do all in our power to urge that they remain at work pending settlement of any grievance under the contract.

"We respectfully request that you re-open your mines so that the employees who we represent will be able to earn a livelihood for themselves, their wives and their children."

Signed by J. W. Ridings.

Q. I hand you these papers, Mr. Turnblazer, and I will ask you if you will explain to us what they are.

A. This is a telegram of October 22nd, 1962, which we sent to Tennessee Consolidated Coal Company, Grundy Mining Company and Allen and Garcia, and also a letter of the same date.

Q. In this correspondence did you offer to meet with the company to negotiate a new agreement?

A. Yes, sir, we did.

Q. Did you offer to continue the men at work or to recommend that they continue at work pending the

5184 negotiations of the new agreement?

A. Yes, sir, we did.

Mr. Rayson: We offer this as an exhibit to Mr. Turnblazer's testimony.

Mr. Rowntree: Those two last questions were directed to the content of the letter?

Mr. Rayson: Yes.

The Court: A collective exhibit?

Mr. Rayson: Yes.

The Court: Exhibit 420.

(The telegram and letter referred to above were marked D-420 and received in evidence.)

Q. By the way, in this discussion you had with Mr. Harwood and Mr. Ables, was there any threat of a lawsuit against the union at that time?

A. Well, we were discussing the contract and one thing and other. They said—well, I believe it was Mr. Harwood said that, "If you don't get some kind of contract different than what you have already got over there we are going to file a lawsuit."

Q. Do you—

A. (Interposing) Two days later we were sued for six millon dollars.

Q. Where was that suit filed?

A. Circuit Court, Davidson County, Tennessee.

5185 Q. Was that suit commenced only by the issuance of a summons?

A. Yes, sir.

Mr. Rayson: Your Honor, I would like to read from the telegram and from the letter that have just been introduced as a collective exhibit.

This is the telegram addressed to Tennessee Consolidated Coal Company, Grundy Mining Company and Allen and Garcia Company, Tracy City, Tennessee. The telegram is dated October 22, 1962.

"Since we are in agreement that the existing contract at your Grays Creek No. 11 mine will expire on October 24, 1962, by virtue of your termination notice, we propose that

we make an immediate effort to negotiate a successor contract.

"We stand ready to negotiate with you at a mutually agreeable time and place.

"Pending the consummation of a new contract, we propose and offer that the mine continue at work under the terms and conditions existing at the time of the expiration of the old contract.

"We would appreciate a reply at your earliest convenience. Letter follows."

Signed by Mr. Ridings.

The letter is addressed to the same concerns on
5186 the same date and is substantially to the same effect and I don't believe it would be necessary to read that.

Q. Did Mr. Callis reply to that telegram and letter?

A. Yes, sir, we received a reply two days later, I believe it was.

Q. Was his reply by the telegram, a copy of which I now hand you?

A. Yes, sir, this is a reply to the telegram of October 22nd.

Mr. Rayson: We offer that as the next exhibit.

The Court: Exhibit 421.

(The telegram referred to above was marked D-421 and received in evidence.)

Q. Mr. Turnblazer, is it your usual procedure to offer to continue your membership at work pending the negotiation of a new contract?

A. That is the first time in my memory since 1947 that we have offered to do that.

Q. Why did you do that?

A. Well, there was several different reasons. The biggest one, we felt that if that mine—in developing the mine the first few months are the most important part, if it is developed properly, why, it has got more likelihood to be a success and we wanted to keep that mine in opera-

5187 tion so that our members would have a place to wor
that was the big reason. There were other reasons.

Mr. Rayson: Your Honor, this is Mr. Callis' reply to th
union's communications of October 22nd, which I just rea

"Reurtel 10-22-62. Grundy Mining Company is operato
of Grays Creek No. 11 mine. Neither Allen and Garcia o
Tennessee Consolidated are managing this mine. A
Grundy Mining Company mines will be open for work o
and after 10-24-62 so that the employees will be able to ear
a livelihood for themselves, their wives and their childre
at their current wage rates. After certification of UMW
by NLRB as bargaining agent of the employees, labo
negotiations will be handled for us by Sewanee Coa
Operators Association. We remind you that future of Gray
Creek No. 11 mine and 8-year TVA contract depend upo
our having full work force of qualified machine operators.

"Grundy Mining Company by Paul V. Callis, President."

Q. Now, in the meantime, Mr. Turnblazer, had District
19 been notified of the formation of the Sewanee Coa
Operators Association?

A. Yes, sir, I think we received a letter from Mr. Ables
in October, about the 12th or 13th of October, stating that
he represented and the Sewanee Coal Operators As-
5188 sociation had been formed and that he represented
certain operators and that they wanted to sit down
and negotiate a contract.

Q. I show you a letter dated October 13, 1962, and I will
ask you if that is the letter from Mr. Ables by which you
were notified of the formation of that association.

A. Yes, sir, this is the letter we received.

Q. Do you know whether or not that letter had attached
to it a list of a number of members of the association at
one time?

A. Yes, sir, it did.

Q. Do you still have a copy of that list?

A. We have looked for one. I think that we have wore
it out duplicating it for the Labor Board.

Q. All right, sir. How many mines were on the list, do you recall?

A. I think there was somewhat over 20 operators.

* * * * * * * * *

5189 The Court: Exhibit No. 422.

(The letter and list referred to above were marked D-422 and received in evidence.)

* * * * * * * * * *

Q. Did you agree to meet with that association, Mr. Turnblazer?

A. Yes, sir, we met.

Q. And is that a copy of Mr. Ridings' reply to Mr. Ables?

A. Yes, sir, it is.

Mr. Rayson: Dated October 23, 1962. We offer that as an exhibit to Mr. Turnblazer's testimony.

The Court: Exhibit 423.

(The letter referred to above was marked D-423 and received in evidence.)

Q. Did you thereafter arrange for a meeting with the Sewanee Coal Operators Association?

A. Yes, sir, we met later on in October or early November.

Q. Did you participate in that meeting and in all of the subsequent meetings between the district and the Sewanee Coal Operators Association?

A. Yes, sir, I did. There were four such meetings.

Q. At the first meeting for these negotiations were
5190 you given an enlarged list of members of the association?

A. Yes, sir. We were given, I think, 30 some names of companies which at that time were members of that association.

Q. Was Grundy Mining Company one of those given to you at that time?

A. I don't recall whether Grundy was at that time but

it seemed like at one of the meetings that it came out that they were a member of that association.

Q. Tell us what transpired at the first of these meetings, Mr. Turnblazer, tell us first who was present and then tell us what transpired.

A. At the first meeting Mr. Ridings and myself, Howard Madewell, presidents of the local unions, and possibly the secretaries of the local unions involved, were present.

We met in the office of Mr. Peak, who is the federal mediator here in Chattanooga, and the operators were represented by Mr. Bill Ables, Houston Beaumont, Howard Human of Tennessee Products, Houston Beaumont of Grundy Mining Company and Tennessee Consolidated Coal Company, Willis Flynn, Howard Higgins, J. H. Graham, and I believe Marshall Meeks was in that meeting.

Q. What transpired?

A. And possibly one or two other operators.

Q. Who were the spokesmen for the operators?

5191 A. The spokesmen at that meeting that did most of the talking was Mr. Bill Ables and next in line was Mr. Houston Beaumont.

Q. What was discussed at the meeting? First of all, let me ask you if you were asked whether the items of collective bargaining that were to be discussed were negotiable.

A. Yes, sir. We stated at the very outset that all issues were negotiable and that we would listen to any proposal that they wanted to submit and certainly we would give it due consideration and we would also ask them for certain things at that meeting.

We asked them what authority they had from their members. They quoted from their By-laws. We asked them at that time to submit the wage scales that they were then paying. We asked them for copies of any leases that they might have with either Tennessee Consolidated Coal Company or Tennessee Products, and we asked them at that time to submit, or if they would prevail upon their members to

remit the union dues which their members had been collecting and not sending into the district office and they indicated that they would try to prevail on their members to look into the dues question and then we agreed to meet at a later date.

That was the sum and substance of the first meet-
5192 ing.

Q. When did you next meet with this group?

A. There was a meeting in November, I think about the 30th or thereabouts.

Q. Were the representatives present at that meeting substantially the same as they were at the previous meeting?

A. Yes, sir, I think that Mr. Daffron was in this second meeting from Tennessee Products.

Q. Was Mr. Ridings present at the second meeting?

A. Mr. Ridings was not present. He was not feeling too good that day, he was not there.

Q. Did Mr. Ridings retire as president of District 19 at or about this time, Mr. Turnblazer?

A. It was the 1st of December, 1962, effective that day.

Q. How old is Mr. Ridings, by the way?

A. Well, he is somewhat over 70.

Q. What is the state of his health at this time?

A. He is not in too good a shape, he has ups and downs.

Q. All right, sir. What transpired at the second meeting, Mr. Turnblazer?

A. At that second meeting there was a general discus-
sion and Mr. Peak did quite a bit of talking at that
5193 meeting and we discussed some of the things, we again asked him for the wage rates that they were then paying and asked them for the right to look at their books since they said they couldn't pay the present contract.

Q. Did they make that contention at the first meeting or at the second meeting?

A. I believe it came out in the first meeting, but it was more thoroughly discussed in the second meeting.

Q. You say you asked for the right to examine their financial records?

A. That is correct.

Q. Did you make that demand at the first meeting or the second meeting?

A. I believe the second meeting, as I recall.

Q. All right. Incidentally, whatever became of that, did they ever produce any financial information or agree that you had the right to?

A. No, sir, they never did present them, they never did let us look at them either.

Q. All right, sir. What else transpired at the second meeting?

A. Well, that was about it and we agreed to meet again and Mr. Peak was saying at that time that maybe if the Sewanee Association would submit some proposition in writing that maybe we could get a little bit closer.

5194 So they prepared a proposition, which was submitted at the third meeting, which I believe was December 18th.

Q. Meanwhile had you prepared some sort of a written authorization for employee members to sign with respect to the deduction and remittance of dues?

A. I believe that at the second meeting that came up, somebody brought up the question that maybe they didn't have the legal authority to deduct dues after October the 24th, when most of the contracts expired, and we prepared such a petition and submitted it to each individual company involved.

Q. Do you know when that was accomplished?

A. It started along about December the 1st.

Q. All right, sir. Do you know whether any dues were deducted during the fall of the year by any of the operators?

A. I don't believe they were.

Q. Do you know whether any were remitted?

A. There may have been one or two companies that re-

mitted but for the most part they didn't. I know that Grundy didn't.

Q. All right. You say that the third meeting was on December 18th. Were the people in attendance at that meeting about the same that they had been?

A. Yes, sir, substantially the same.

5195 Q. Did the Sewanee Coal Operators Association present a proposition to you in writing at that time?

A. Yes, sir, they did.

Q. Tell us what transpired then at that meeting, particularly with reference to this offer.

A. As I recall, the association submitted the proposition which called for the classification of mines. They proposed a classification to determine A mine, A mine would be a fully mechanized mobile equipment mine, which was the Grays Creek No. 11, and Grundy Mining Company was in that category.

Q. Before you go on, Mr. Turnblazer, was there any discussion at that meeting which of the area mines fell in that classification, A?

A. Yes, sir, there was a discussion.

Q. What was that?

A. There was a discussion at that time, I believe Mr. Beaumont stated that that A classification covered the Grundy No. 11 mine, that possibly they might be other mines opened that would fit in that category, but at that time that was the only mine in the category A.

Q. All right, sir. Go ahead then with your explanation of the offers.

A. They proposed, I think, to pay the going rate at that time, the same rate of pay that the expired contract

5196 called for for the load machine operators, shuttle car operators and the cutting machine operators and the group loader and other employees.

Q. Did they make any offer with respect to the payment of the welfare royalty?

A. They made an offer, sort of a sliding proposition, eig cents or twelve cents, something like that.

Q. Was there any discussion at that time—the slidin what was it based upon, what was it sliding upon?

A. It was based upon the productivity of the employe at the mines, so many tons per man per day.

Q. Was there any discussion of what productivity wa at the Grays Creek No. 11 at that meeting?

A. I believe they said they was getting along pretty goo getting about 20 tons to the man.

Q. All right. Was there any discussion of the mine pr ductivity at the face?

A. I don't know whether there was or not, but we unde stood and we had evidence that it was higher than the 2 tons per man at the face.

Q. All right. Go ahead just generally with your othe offers and other aspects of the offers that they made to yo

A. Well, one of the other classifications was Class B, tha was the mines where there was some mobile equip
5197 ment and some track equipment, some of the mine that fell in that category they stated were the mine in the Griffith's Creek area and the mines of Tennessee Products and Chemical Corporation operated by Marshall Meeks, Max Condra and the Nunleys, Ed and Leon, and Virgil Thomas, that those mines were considered mecha nized mines but they weren't fully mobile and on that par ticular category they wanted a lower rate than what was being paid at the Grays Creek No. 11 mine.

Q. What about the other classification?

A. Well, there was Class B and it was divided up into two, Class C-1 and C-2, and then C-1 was mines that were track mines where the coal was undercut by cutting ma chines, loaded in hand loaded or mechanically loaded into cars and transported to the outside and they wanted a still lower rate there, I think the rate there was to have been the Walsh-Healy rate, $20.12 for eight hours.

Q. Minimum wage?

A. That's correct. Then the other category was the C-2, was the mines where the coal was not undercut, where it was shot off the solid, hand loaded or after being shot off the solid by mechanically loaded into cars and that was to be considered the C-2 and it would carry about the same rate.

And then they had Class D mines, which were
5198 mines which were being shot off the solid primarily and loaded into small cars by hand and the coal was transported to the outside by mules.

Q. Do you know if there were any mines in that category at that time?

A. Beg your pardon?

Q. Do you know if there were any mines in this last category that were in operation at that time?

A. There were a few but not as many as there once had been in that area.

Q. Was there any offer made for welfare royalty for the B, C and D classification?

A. Yes, sir, I think that was on the basis of productivity also.

Q. The same welfare proposition as had been made in Grays Creek 11?

A. The same with reference to the Welfare Fund.

Q. All right. Did you make any statement with respect to this proposition at that time?

A. Well, we told them that we would look at it.

Q. All right. Did you?

A. And report back.

Q. All right. Did you thereafter make a report on this meeting to Mr. Boyle?

A. I did. I presented a report of the offer and
5199 what we understood occurred in that particular meeting.

Q. Did you at any time thereafter make a decision as

to whether you would recommend any acceptance of this proposition to the International officers?

A. Well, we gave it consideration and we said that we could not recommend that particular offer for consideration.

* * * * * * * * * *

Q. In considering the acceptability of the offer which was made to you on December 18th, Mr. Turnblazer,
5200 did you take this matter up with the representatives of the local unions?

A. Yes, sir, we discussed it with members of the committee and officers of the local unions.

Q. Was it acceptable to them?

A. No, sir, it wasn't.

Q. Was it acceptable to you?

A. No, sir.

Q. I asked you a few minutes ago as to whether you made a report to Mr. Boyle, I believe you said you did, and I will show you Exhibit D-368 and I will ask you if that is a copy of your report.

A. Yes, sir, this is a copy and the letter of transmittal.

Q. When was that transmitted to Mr. Boyle?

A. December the 26th, 1962.

Mr. Rayson: This is a little lengthy, your Honor, but I would like to read portions of it. It is already in evidence, states there the meetings had been had with the operators, the representatives who had been present, the offer that had been made by the operators at the meeting of December 18th, and then it goes on in this manner:

"We believe that 90 per cent of the coal produced in southern Tennessee comes off the property of the
5201 two large companies.

"Tennessee Products and Chemical Corporation has a long term lease from the U. S. Steel Corporation of about 24,000 acres in Marion, Grundy and Sequatchie Counties at 17 cents per ton. There is a minimum royalty of

$5,000 per month. This lease runs to April 30, 1972, with option to renew for 20 years."

Q. Mr. Turnblazer, may I interrupt reading this to ask you how you became aware of that information?

A. In the register of deeds office.

Q. Did you examine the lease to find out what the situation was?

A. I did, a long time previous to this.

Q. All right, sir. But this was a part of the information that you had?

A. Yes, sir.

Q. In making this decision?

A. Yes, sir.

Mr. Rayson: Continuing with the report:

"U. S. Steel prescribes how and where the coal may be mined. I would estimate that approximately 10 thousand to 12 thousand acres have been mined on this tract. U. S. Steel formerly operated a large mine at Whitwell on this tract but ceased in 1929. This mine last worked in 1948.

"Tennessee Products opened a mechanized mine in
5202 1945, and they allege it worked out in January, 1962.

However, they now have four small mines in this vicinity. This mines have Joy loaders and shuttle cars and enjoy a high ton per man per day.

"In what is called the Daus Mountain area for the past 10 years they have had about 30 small mines, semi-mechanized. The coal in this area is smaller and difficult to mine and they have indicated that no new mines will be opened there.

"Adjacent to the old U. S. Steel No. 9 mine at Whitwell, there have been numerous small mines which are now about worked out. These were hand loading, shooting was off the solid, and mules were used until four or five years ago. We feel that these mines will be worked out within the next year or so, as only 15 or 16 are now operating.

"Between the Whitwell area and the Daus Mountain area,

on what is called the Kelly Creek area, there are about 5,0
acres, more or less, of virgin coal, and an examination
the lease shows that this particular area cannot be mi
by the truck mining method. It is this area that every
has been led to believe that Tennessee Products will o
a modern mine.

"Tennessee Products leases out to the small operat
various tracts and demands up to 60 cents a ton royalty.
some instances they furnish certain machinery and
5203 forth.

"Tennessee Consolidated Coal Company operates in
same manner. They own or hold 30 thousand or more ac
some of which adjoins the U. S. Steel property.

"This company's Palmer mine was closed about 19
which employed over 500 men. Later they opened up
Coal Valley semi-mechanical mine which fell in in Ju
1962. They also had some 16 small hand loading mines
the Pocket area, employing up to 20 men each. These mi
are for the most part, still in operation.

"In July, 1962, the company, acting through Allen a
Garcia, opened a mine in virgin coal on Grays Creek. Th
is a mechanized mine and is operated under the name
Grundy Mining Company, and now employs about 53 m
We are advised that they are averaging close to 25 tons p
man per day. In this same Grays Creek area they ha
opened about 10 small mines. We are advised that the
10 mines are working toward the old 'Coal Valley' mi
to get the coal that was blocked when the mine fell in la
June. All of this coal is trucked to the Palmer tipple, a di
tance of some 10 miles. These 10 mines are hand loadin
shooting off the solid, with motors to transport the coal.

"In reality, there are only two companies in this entir
area. They are calling all of the shots, but want to hid
and avoid the responsibility for wages, royalty, an
5204 other matters."

* * * * * * * * *

Q. Were those among the matters that you considered in deciding to reject the offers or the offer which had been made by the operators, Mr. Turnblazer?

A. Yes, sir, they were.

Q. Did you thereafter have another and fourth
5205 meeting with the representatives of the operators?

A. Yes, sir, we met, I believe, on January 18th, 1963.

Q. Did you tell them at that time that that offer was not acceptable?

A. We did.

Q. Did you discuss with them some additional amount over and above the amount called for by the National Bituminous Coal Wage Agreement?

A. In that meeting we discussed that they had offered eight to twelve cents, I think, and we discussed the proposition that we thought that the men were entitled to pensions ought to have their pensions back at the rate of a hundred dollars a month, and they had been cut, I think at that time, to eighty-five, maybe seventy-five and we discussed the figure of 50 cents a ton royalty and to provide for pensions, we discussed many and another issue and finally told them we didn't think that we would be position to recommend their proposition to be considered and we told them that we would be glad to meet again at any time and they took into consideration our discussions and later on wrote us a letter in which they said that our proposals were not acceptable.

Q. What was your final proposals at that meeting, the fourth meeting?

5206 A. Well, we discussed the present contract, the contract that had recently expired, that we would be willing to recommend that.

Q. Did you leave with the operators a demand for an increased royalty?

A. No, we didn't make any demand, we just — that was

just bantered back and forth in discussion. We didn't make no ultimatum.

Q. All right. Did you tell them that the existing contract would be acceptable?

A. We said the existing contract we thought would be acceptable because it provided for pensions and it provided for complete hospitalization and provided for adequate wages and protection under the Safety Code and other benefits derived under the contract.

Q. Was there a discussion at this meeting concerning a bond for the fulfillment of the contract of the National Bituminous Coal Wage Agreement?

A. Yes, sir, we discussed that because we knew that the Tennessee Products on one side, and the Tennessee Consolidated on the other, had in the past come up with the money to pay vacation pay and come up to pay the wages that was due to the employees and we thought if they would come through with some bonding arrangement that it would certainly create a better atmosphere and keep the
5207 men at work than to have all of the confusion of having stoppages each year over vacation pay or stoppages at times over wages and other royalty payments and other benefits which the men were entitled to under the contract.

* * * * * * * * * *

Q. Did you make any such statement in connection with your discussions at the meeting, if you recall?

A. Yes, sir, we made those discussions, just like I have stated here.

Q. You mean also with regard to coming up with certain wage payments?

A. Well, I knew that at that time and I know now that those companies had come to the rescue of the operators and paid those men off.

Q. Tell us what you mean by that or when that had been done, according to your information.

A. In 1961, I believe it was, Tennessee Products paid off the vacation pay and some wages that was due
5208 over there after meetings was held with the president of the company, Mr. Baum.

Q. Do you know whether or not Tennessee Products also came up with a payment in connection with some substantial delinquencies found due by the Department of Labor under the Walsh-Healy Act?

A. Yes, sir.

Q. For the truck mine operators on its property?

A. Yes, sir.

Mr. Rowntree: Now, with respect to that, I think this was a compromise settlement and I object on the best evidence rule.

The Court: Sustained.

Mr. Rayson: All right, your Honor. I think we can come back to that at a more appropriate point at a later time.

Q. Did you make a demand to those people, Mr. Turnblazer, for a bonding arrangement in connection with the contract?

A. No, it wasn't an ultimatum, it was discussed and, in fact, I believe they wanted us to put a bond up for some reason, I believe that was discussed.

Q. All right.

A. I don't recall in what respect it was but I am pretty sure it was discussed.

5209 Q. Now, were the mines working at the time of the fourth meeting?

A. On January 18th?

Q. Yes.

A. No, sir.

Q. When, according to your information, did they stop work?

A. December 26th, 1962.

Q. Did you, or to your informaton, did any officer or

representative of District 19 authorize or direct that work stoppage commence?

A. No, sir.

Q. Were you advised of it?

A. I learned about it that day.

Q. How did you learn of it?

A. The first information I got was some fellow with the television station here in Chattanooga called me and said he had learned that all the mines were not working and I called for Mr. Madewell and verified that they weren't working.

Q. Did you find out what the reasons were for the men going out on strike at that time?

A. A few days later in talking to Mr. Madewell and with some of the officers of the local unions I found out that the principal reason was that the Grays Creek No. 11,

5210 the company absolutely refused to talk with the mine committee. The company refused to deduct the union dues and they refused to discuss any matter. The other companies in the Pocket area had refused to send in union dues, refused to deduct union dues after authorizations had been presented, and I think in some instances they refused to discuss grievances with the mine committee.

* * * * * * * * *

A. And various other complaints.

Q. All right. After you made your investigation did you write to Mr. Callis in this regard?

A. Yes, sir, we wrote Mr. Callis on January 4, 1963.

Q. Is that a copy of your letter to Mr. Callis?

A. Yes, sir.

Mr. Rayson: We offer that as an exhibit to Mr. Turnblazer's testimony.

The Court: Exhibit 424.

(The letter referred to above was marked D-424 and received in evidence.)

5211 Q. Did you recommend to those men that they go back to work, Mr. Turnblazer?

A. No, sir, I didn't.

Q. Why didn't you?

A. We had completely run out of anything to promise.

Q. Promise who?

A. Everything that we had told them that—we told them we thought that the company would recognize the committee pending negotiations, we thought they would carry out the contract pending negotiations, the Grundy Company and also the other companies, and they just absolutely failed and refused to meet with our people and when that happened, why, there was no alternative.

Mr. Rayson: Your Honor, I would like to read Mr. Turnblazer's letter to Mr. Callis.

Mr. Rowntree: We object to the content of the letter for the truth of the statement therein contained but not with repect to the communication.

The Court: All right.

Mr. Rayson: Dated January 4, 1963.

"I am in receipt of your letter of December 21, 1962, and have read the information letter you forwarded to all of your employees under date of December 26, 1962.

"This is to advise you that District 19, United
5212 Mine Workers of America, did not in any way or manner direct or authorize the stoppage of work or picketing at your mine or any of the mines controlled by you or your company.

"We are of the opinion that this stoppage of work is the direct result of your activities and the activities of your company. You, through the parent organization, the Tennessee Consolidated Coal Company and its agent, the Allen and Garcia Company, and now through its wholly owned subsidiary, the Grundy Mining Company, have refused to process employee grievances that arose under the contract with the United Mine Workers of America, and have refused to recognize the seniority provision of that contract.

"As you will recall after the Allen and Garcia Company as management operators of Tennessee Consolidated Coal

Company gave notice of termination of the contract, we advised your employees to continue to work pending good faith negotiations of a successor contract. This offer was made on our behalf with the understanding that the same contractual provisions would exist.

"Since that time, instead of negotiating in good faith, you have done everything possible to incite a stoppage of work at the mine. Your employees remained at work without a written contract thereby exhibiting their good faith in working out our mutual problems. However, you did not maintain the same conditions of employment inas-
5213 much as you did not make payments to the Welfare Fund, did not check off dues, and did not process grievances, and your agent, Allen and Garcia Company, refused to pay royalties for the months of August, September and October, 1962. Your agreement about the legality of the check-off provisions are unfounded. You will recall that in October, 1962, you checked membership dues from the wages of your employees, and did not do so in the month of November, 1962. In December, 1962, you received a written authorization from each of your employees requesting that you deduct from their wages membership dues and forward same to the secretary-treasurer, District 19, United Mine Workers of America, Middlesboro, Kentucky. This authorization was in compliance with the Labor Management Relations Act. You did not honor this authorization and state that if the employees would come to the office and sign a form you will transmit the dues to the party so designated on the form by the employee. It is difficult to conceive wherein the authorization of the employees under date of December 1, 1962, could have more clearly expressed the intent and desire of the employees that their membership dues be deducted from their wages and forwarded as therein specified."

I am skipping part of this letter.

"In addition to the above you have refused to bargain with us during this period of time thereby breaking

5214 all faith with us and with your employees. In spite of all of the provocations, we hoped, as an agent of your employees, to find some way to settle their differences with you and enter into a contract for them.

"However, your employees are not required to work for you under terms and working conditions decided solely by you and your company. They did work for a long period of time without a written contract. They are not required to continue in your services while you systematically seek by this method to destroy their hospital and medical program, pensions, their job security and their wage structure.

"I suggest that we meet as soon as possible and enter into good faith negotiations looking forward to a speedy and better settlement of the economic issues that are involved. Let me assure you that during any period of time your mine is idle, this office and our field representatives will do all in our power to see that your employees remain peaceful and not engage in any unlawful activity. We do not and will not condone such conduct. We hope that you and your company officials do likewise and refrain from acts of provocation."

Q. Now, Mr. Turnblazer, going back to our Exhibit P-398, the amended petition for certification which was filed by District 19 on October 13, 1962, what was the status of this petition in January of 1963, had any action

5215 been taken on it?

A. Action had not been taken. The Grundy Mining Company had filed an unfair labor practice charge against the union and that, of course, stopped the processing of the amended petition.

Then, I believe, that it was in the last meeting we held on January 18th, maybe—I think right at the close of the meeting that as we were leaving Mr. Ables indicated that they would waive that charge and allow the election to proceed.

Q. Did he say on what basis he would allow the election to proceed?

A. That the unit would be composed of not only the No. 11 mine of Grundy but the other seven or eight or ten mines that they had then in operation.

Q. Was these the truck mines that had been opened in Grays Creek?

A. They was opened in the fall, August, September and October.

Q. Who had been employed at these truck mines that had been opened in the summer in '62 and the fall of '62?

A. Various people, but, to the best of my knowledge, none of the men that had formerly worked at the Coal Valley Mine.

Q. All right. Did you thereafter authorize the
5216 attorneys for District 19 to withdraw the certificate for certification?

A. Yes, sir, we did because—since the formation of the Sewanee Coal Operators Association, and having gone over all those four meetings, it was decided to withdraw that petition and file another one embracing the entire membership of the Sewanee Coal Operators Association.

Q. Do you recall when that petition was withdrawn?

A. It was withdrawn late in January or early February, 1963, and one was filed within a day or two thereafter.

Q. All right, sir. I show you a number of papers, which are bound together, and I will ask you if you can identify the top paper in that file.

A. Yes, sir. This is a petition which was filed with the National Labor Relations Board seeking a unit composed of the operators comprising the Sewanee Coal Operators Association, multi-employer unit.

Q. Do you recall when that was filed?

A. According to that it is February 21st, 1963.

Q. All right. Now, the second paper I show you, the second and third paper seems to be a list of the mining companies—will you tell us if that list was attached to the petition for certification?

A. Yes, sir, that list was attached to the petition.

5217 Q. Where did you get those names?

A. Those names come from the membership of the association and the ones that we had been talking to in the negotiations.

Q. Did you include Grundy Mining Company in that list?

A. Grundy Mining Company was included and Tennessee Products and Chemical Corporation was included and a number of others.

Q. Can you identify generally what the other papers are in this file?

A. Yes, sir.

Q. Well, let me ask you this: Do you know if that constitutes the pleadings that followed from the Board proceedings of the Sewanee Coal Operators matter?

A. Yes, sir, it does.

Q. Did that ultimately lead to the certification of the United Mine Workers as bargaining representative of the employees of members of the Sewanee Coal Operators Association and the successors to the employers in that association?

A. Yes, sir. The last sheet of this shows that sometime in May, 1965, that when challenged ballots were all counted and then we were at a later date certified as the bargaining agent, in June, 1965.

Mr. Rayson: Your Honor, we offer these papers
5218 as an exhibit to Mr. Turnblazer's testimony.

The Court: Exhibit No. 425.

(The documents referred to above were marked D-425 and received in evidence.)

Q. When a hearing was had on the United Mine Workers' petition of February 21st, let me ask you if it wasn't June, 1963.

A. June of 1963 at South Pittsburgh, Tennessee.

Q. Do you recall if the Southern Labor Union had filed petitions for certification with respect to certain of the employers in the association prior to that time?

A. Yes, sir, they had. I think the Trussell Coal Company

and probably Stephenson Brothers Coal Company and M. A. Payne, Incorporated, and I believe those are the three, they intervened.

Q. Do you recall whether or not they also filed petitions and intervened with respect to Grundy Mining Company?

A. They did.

Q. All right. Were those cases all consolidated with the case initiated by the United Mine Workers?

A. Yes, sir.

Q. Now, you say that there was a hearing in June of 1962?

A. Sixty-three.

5219 Q. Sixty-three. Did you file a charge, an unfair labor practice charge, against Tennessee Consolidated Coal Company and Grundy Mining Company based upon unlawful assistance and domination of some other labor union?

A. Yes, sir; I believe it was in March, 1963, or early April that we filed such a charge.

Q. What union or so-called union was involved in those proceedings?

A. Tennessee Valley Coal Miners Union.

Q. Had you ever heard of that union before?

A. No, sir.

Q. Were you advised who was the leader of that organization?

A. A fellow by the name of Walter Frizzell.

Q. What happened to that charge?

A. The Grundy Mining Company and the Tennessee Valley Coal Miners Union agreed that they were in violation of the law and entered into a settlement.

* * * * * * * * * *

Q. Let me withdraw that question and ask you this: Do you know whether or not the company and the Tennessee Valley Miners Union entered into a settlement agreement with the National Labor Relations Board pursuant to your charge?

5220 A. They did.

Q. Did subsequently the company post certain notices in accordance with that settlement agreement?

A. They did.

Q. Did you find Mr. Frizzell active in some other large labor organization after the disposition of that case, Mr. Turnblazer?

A. We did find him to be active in the formation of Local No. 139 of the Southern Labor Union.

Q. All right. What was the result of or what was the original decision of the National Labor Relations Board in the Sewanee Coal Operators case?

A. The original decision was the multi-employer group was the appropriate unit and the election was correct.

Q. All right, sir.

A. Covering that unit.

Q. All right.

A. The election was directed and held October 15, 1963.

Q. Do you recall whether or not this decision was contrary to the position taken in the case by the coal operators in the Southern Labor Union?

A. It was.

Q. In accordance with this decision was an election conducted?

5221 A. Yes, sir, an election was conducted October the 15th, 1963, at Jasper, Tennessee.

Q. Do you recall approximately how many people voted in that election?

A. Approximately 570 or 80 or thereabouts.

Q. Did some of these people vote on a challenged ballot?

A. Yes, sir, quite a number did.

Q. Who challenged some of these voters?

A. United Mine Workers challenged about 35 or 40 and the National Labor Relations Board challenged the balance.

Q. All right. Of the unchallenged voters at the election, I believe you testified that the election was conducted October 15th?

A. That is correct.

Q. What was the result of the election?

A. I believe the United Mine Workers got 108 and the Southern Labor Union 50.

Q. Do you know why the National Labor Relations Board challenged those persons offering to vote which it challenged?

A. At the pre-election conference, which was held a day or two, or possibly a week maybe in this instance it was a week before the election, at the pre-election conference held at the courthouse at Jasper, Tennessee, and at that
5222 time the Sewanee Coal Operators Association submitted lists of employees of various operators. They also took the position that many of the operators had ceased to do business, had been out of business and had abandoned their mines and for that reason on the day of the election when the Labor Board people arrived and started the balloting, a lot of the people who we have contended were entitled to vote were not on the lists that had been submitted by the various companies, members of the Sewanee Coal Operators Association, and for that reason they allowed them to vote a challenged ballot and later on, it was much later, in May of '65, it was determined that those people were entitled to vote and were qualified voters.

Q. You say the challenged ballots, all of the challenged ballots, including the ones that you challenged were subsequently counted?

A. That is correct.

Q. Do you recall what the final tally was?

A. No, I don't.

Q. Well, I show you here the official tallied ballots and will ask you if you will examine that and see what the final vote was.

A. The final vote which was announced May 26th, 1965, was the United Mine Workers of America 480 votes, Local 139, Southern Labor Union, 96.

* * * * * * * * * *

5224 Q. Had there ever been an offer made to you
5225 earlier in the year, Mr. Turnblazer, for negotiations leading up to an election if some of the employees of Grundy Mining Company were excluded from the election on the ground that they were properly terminated?

A. Yes, sir, I think somewhere earlier to that that there was efforts made to agree on a proper unit which would have excluded certain people, one of them was Mr. Doug Ross.

Q. Would you agree to that at that time?

A. No, sir-ree.

Q. Were objections filed to this election?

A. Objections were filed, both by Grundy Mining Company and by the Southern Labor Union.

Q. Do you recall whether these objections included an objection based on the contention that the Grundy Mining Company employees had not been permitted to vote?

A. Yes, sir, one of those objections was that.

Q. That they had been intimidated?

A. That is correct, and in that respect that election was held, I think there was four men from the National Labor Relations Board and about three, if not four deputy marshals and a marshal, plus the sheriff of the county and about six deputies.

Q. Where was the election held?

A. Right across the street from the courthouse in Jasper, Tennessee.

5226 Q. Were you in Jasper on that day?

A. I was there from the time the election opened until they counted the last ballot.

Q. Was the activity in Jasper that day ordinary or were they marked by disorder?

A. Well, this was about as orderly an election as I ever seen.

Q. What was—

A. (Interposing) There was a lot of confusion to start with with men trying to get in the voting place, and until

we got them all lined up, because everybody was wan
to vote and get away.

Q. What was the final decision on those objections?

A. Those objections were all overruled.

Q. Did the coal operators involved in that proceed
continue to object to it after the objections were overru

A. Yes, sir, they filed a motion for rehearing or so
similar motion.

Q. Were these various objections ultimately overr
by the Board?

A. They were all overruled and eventually, in Ju
1965, we counted all the ballots down in the Board of
in Atlanta.

Q. Mr. Turnblazer, after the election on Octo
5227 of 1963, were you advised, or did you learn that
Callis might be interested in negotiating or that
might be interested in accepting the results of the electi

A. Yes, sir, I think we had some indication of that.

Q. Did you write to him?

A. As I recall, we wrote him a letter on it about t
time or sometime a week or so after the election.

Q. Did you offer to meet with him?

A. We did.

Q. Did you offer to work out some temporary arran
ments for work pending the negotiations of the contra

A. We did.

Q. Did you ever hear from him?

A. I don't believe we ever heard from him.

Q. Have you since then wrote to all of the operators
that association?

A. Yes, sir.

Q. Since the certification?

A. Since the certification in June we have written th
all, I think two letter and—

Mr. Rowntree: (Interposing) June of what year?

The Witness: Nineteen sixty-five.

We have written all of them, including Grundy, some

the plaintiffs but not all of them in this case, two
5228 letters and we haven't heard from any of them, I don't believe.

Q. All right, sir. Something has been said in this record of a disturbance which occurred near the intersection of the Pocket Road and Highway 108 on February 22, 1963. Do you have any information about that, Mr. Turnblazer?

A. Only what I heard. I have no personal knowledge of it.

Q. Did you in any way authorize a disturbance or a blocking of any road on that day?

A. No, sir.

Q. Did you take—

A. (Interposing) Not that day or any other day.

Q. Did you take any steps with respect to that after you learned of it?

A. Yes, sir, we did. We sent telegrams admonishing our people as officers and then later had a meeting with all of the officers and the mine committee men and discussed that very thing with them for over an hour.

Q. Is this a copy of the telegram which you sent to the officers of several of the local unions following your receipt of that information?

A. Yes, sir, it is.

Mr. Rayson: We offer that as an exhibit to Mr. Turnblazer's testimony.

5229 The Court: No. 427.

(The telegram referred to above was marked D-427 and received in evidence.)

Q. Had you given any instructions to the field representatives in the area with respect to the picketing activity?

A. Yes, sir.

Q. What were those instructions?

A. Those instructions were to not be about where there was any picketing because if they were they would certainly be accused of fomenting it or something and I told them to stay away from it because at that time there were certain

injunctions, the State Board had issued an injunction limiting picketing in that particular area.

Q. As far as you know, has any field representative in this area, or any place else, participated in any picketing that has gone on at Grays Creek or any place else in the area since December 26, 1962?

A. To the best of my knowledge they have not.

Q. Were they involved in it on December 26, 1962?

A. They were not.

* * * * * * * * * *

5230 Q. Do you know whether or not that injunction was sought by the National Labor Relations Board?

A. It was.

Q. Was sought in connection with an alleged violation of Section 8-B7 of the National Labor Relations Act?

A. It was.

Q. Do you know whether or not that injunction was later dissolved?

A. It was.

Q. After a week or two after it was issued upon application of the National Labor Relations Board?

A. Some several days after the issuance of the injunction the Board came back in and asked that it be dissolved and it was dissolved.

Q. After you were advised of the issuance of that injunction on or about May the 7th did you take any steps to see that it would be obeyed?

A. Yes, sir, we wired the presidents of all locals and the field worker, Howard Madewell and then the next day or that day sent them all a letter explaining in detail what was expected of them and we also generally let everybody know what we were doing. This is a copy of the letter mailed May the 11th, 1963.

Mr. Rayson: We offer that as an exhibit to Mr. Turnblazer's testimony.

* * * * * * * * * *

5231 The Court: Exhibit No. 428.

(The letter referred to above was marked D-428 and received in evidence.)

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5232 Mr. Rayson: Your Honor, just before the noontime adjournment, we had introduced Exhibit D-428 which was Mr. Turnblazer's instructions to the officers and members of Local Union 5881 and Union 7083, United Mine Workers of America.

* * * * * * * * * *

5233 Q. Were these the local unions that had been enjoined by the course of this Court's order of May the 7th?

A. Yes, sir.

Mr. Rayson: I desire to read this.

"The United States District Court has issued an injunction prohibiting all picketing of the Grundy Mining Company where an object thereof is to force or require Grundy Mining Company to recognize or bargain with respondents, or any of them, or any other labor organization. This injunction applies to District 19 and to Local Unions No. 5881 and 7083, United Mine Workers of America, their officers, agents, representatives and members. This order of the Court must be complied with in every detail. A copy is attached for your information and guidance.

"I, as District president, have taken steps to insure that no officer, representative, employee or agent of District 19 participates in, supports or ratifies any picketing of the Grundy Mining Company and all of its operations. This has been the policy of District 19 from the beginning of the work stoppage last December. However, the Court has found that District 19 supported and ratified this picketing and I intend to see that the activities upon which the

5234 Court relied in so finding are not repeated so that there can be no doubt in the future as to District 19's position in this matter.

"This is to inform you that no officer, representative,

agent, employee or member of District 19, nor of the International Union has any authority to participate in such picketing or to authorize, support or acquiesce in the participation by any other person in picketing the Grundy Mining Company operations.

"I advise your local union, it's officers and members to likewise take similar steps to insure compliance with the injunction.

"It may be helpful to you to understand some of the legal questions involved. They are as follows:

"The Grundy Mining Company filed charges against District 19, Local Union 5881 and Local Union 7083 alleging that they had picketed the mines of the Grundy Mining Company for recognition without filing a petition for an election among the employees of the Grundy Mining Company. The Taft-Hartley Act requires the National Labor Relations Board, if it finds merit to this charge, to seek an injunction prohibiting picketing, and the United States District Court is required to issue an injunction if it finds 'reasonable cause' to believe that this unfair labor practice has been committed. This section of the Taft-Hartley Act pro-
5235 hibits 'labor organizations' from engaging in this type of picketing for an unreasonable length of time, and not to exceed 30 days. Therefore, your local unions should take whatever action is necessary to see that no officer, representative, agent or member of your local union engages in or supports any picketing of the Grundy Mining Company, and to protect themselves by staying out and away from the area and entrances to the Grundy Mining Company because of the policy of the Grundy Mining Company, through its officers and representatives, to seek damages against the union and to fine and jail their officers and members wherever it can, and if any representative of your local union is seen in this area they will interpret this somehow as participating in picketing or encouraging it.

"I fully realize, as well as you, that a great many of the

facts have been distorted for the public's consumption. This publicity is part of the over-all maneuvers of the Tennessee Consolidated Coal Company and its agent, the Grundy Mining Company, to force the employees to accept sub-standard conditions of employment and to force the UMW to grant them economic concessions against their competitors. I am also aware that the so-called new employees of Grundy Mining Company are not coal miners. Most of them are young men with little or no mining experience and unable to satisfactorily perform the required work at
5236 these mining operations, and are being used by the company as 'voting agents' in case the Labor Board decides to have an election at some future date. I am aware, too, that they seek to set up company dominated and assisted unions to defeat your rights and lower your standard of living. The Taft-Hartley law helps them to do this, but the way to cure this is to seek changes in the law to prevent such conduct. In the meantime, we must take steps to insure that we do not violate that law, even though we disagree with it. In the long run the justice of your cause will prevail.

"The coal operators and the newspapers have distorted the amount and nature of the violence and picketing that has occurred in this area. I am also of the opinion that what violence did occur, if any, was provoked by the company or its representatives and may be actually responsible for it. However, I urge each of you to refrain from any act of violence or threat of violence against any person, employee or employer alike. Violence is what the coal operators want because of its inflammatory effect, and to use it against you to defeat your just and lawful aims.

"District 19 has been sympathetic to poverty in this area. We are aware that you, as providers for your wives and children, have been out of work and this brings untold suffering on your loved ones. Because of this, and because of your equity in the funds of the union, District 19
5237 has provided $15 a week grocery orders, a meager

amount, of course, but in hopes it will sustain your families during this period of time. This relief program placed no obligation upon you to engage in any picketing of the Grundy Mining Company operations or any other coal mine, but so that there can be no doubt in any individual's mind, it is reiterated that you are not required to 'picket' in order to receive this 'relief'.

"Again I wish to urge you not to be provoked into a situation that will permit the Grundy Mining Company to inflict punishment on you. This is not to say that I believe any of you are guilty of any illegal conduct as I do not have the means, the facilities nor the power and right to make such determination, but I take this opportunity to urge you for your own sake to obey all laws and all orders of the Courts.

"This injunction, of course, does not prohibit picketing of the other coal operators in that area, but if any such picketing does occur, I advise you to be careful that such picketing occurs only in such places and such areas as cannot be interpreted as picketing of the Grundy Mining Company. Do not interpret my advice as an indication that District 19 urges any such picketing or will participate in it or support it in any manner, because it does not do so. This I want made abundantly clear and understood by all.

5238 "With best wishes, I am, Fraternally yours, William J. Turnblazer."

Mr. Rowntree: May it please the Court, we object to that for any purpose other than the showing that the communication was sent to the local unions and local union members.

Mr. Rayson: We believe that it is competent to show the advice of this union to its membership in the area. I think it is competent under Section 6 of the Norris-LaGuardia Act. We think it is competent in connection with any of the picketing that occurred at that place.

The Court: Let it be received as it may or may not reflect

upon the advice and instructions given by the district to any members or any field representative.

Mr. Turnblazer, at any time have you authorized any disturbances on the part of members of the United Mine Workers in the southern Tennessee area?

A. No, sir.

Q. Have you done anything which you felt condoned any such activities?

A. No, sir. On the contrary, at every opportunity we have admonished them and requested that if any of them was engaging in any difficulty or any violence or any threatened violence to abstain from doing it.

5239 Q. Someone testified in this case, Mr. Graham, I believe, that during the negotiations with the Sewanee Coal Operators that you told him to mechanize. Do you recall anything of that nature?

A. No, sir. We never did tell anybody to mechanize. That was discussed, the mechanized mines was discussed, both the fully mechanized mines and the semi-mechanized, and the other mines was, but no one from our negotiating team ever told them they had to mechanize or words to that effect.

Q. Did you make a statement to the effect that if a mine like the Virgil Thomas mine couldn't pay it was because of poor management?

A. No, sir, I don't recall making that statement. There was discussions during the negotiations about poor management and that certainly there were certain things that management could do that would improve the production of coal at all of the mines and they readily admitted it.

* * * * * * * * * * *

5240 Q. All right, sir. Now, there has also been some discussion in this record about what is termed "tipple mines" or "railroad mines", something to that effect, and I think there has been reference to a number of these mines, including Hickey and Block and Egan, straight fork

and several mines in that general area. I wonder if you would explain to us just what the situation of these mines has been over the years, what they have done.

A. Well, since 1947, why, we have observed many of the mines in East Tennessee and also in Southern Tennessee that went out of business, some went out of business, they just completely worked out, they worked out their entire acreage of coal that they had under lease or that they owned and just recently the Clinchfield Coal Company up at Monteray shut down their mine, which had been in operation since 1952 or '53 by them and several years previously by other people, and they just ran out of territory.

The same is true with some mines in southern Tennessee.

5241 The same is true with the mines in the New River section of Anderson County, the old Moore Mine, which was took over by Pocahontas Fuel, completely worked out. The Lynchmoore Mine and then at Careyville, Tennessee, the Sun Mine, the High Point Mine, Hickey, Block, Turley, they all worked out, their entire acreage that they had, New Jellico Company near Jellico worked for about 40 years and they worked out their territory. The same is true of Blue Diamond Coal Company at Egan, Tennessee, worked there for 50 years. The same is true with the Virginia-Jellico Coal Company at Clairfield and the Prudence Coal and Coke Company, the Blue Diamond Coal Company had another mine at Westburn that worked out, they had one at Ridge, Tennessee that completely worked out and there's probably several others. Those are the ones that I know about.

* * * * * * * * * *

CROSS EXAMINATION

By Mr. Kelly:

* * * * * * * * * *

5250 Q. Mr. Turnblazer, you referred in your direct testimony to something about sending a letter out to all coal operators in the Sewanee—what has been the

Sewanee Coal Operators Association area for it to
5251 dissolve sometime after June, 1965, did you not?

A. Yes, sir.

Q. I didn't fully understand exactly what that letter was or its purpose.

A. Well, in June we had been certified as the bargaining agent and, of course, when we received that certification, why, we wanted to sit down with them and negotiate a contract on behalf of the members that we represented and we had been trying to get them to sit down for three years but hadn't been successful and that was the purpose of the letter. We still haven't been able to get to them.

Q. Did you—Excuse me.

A. That's all.

Q. Did that letter go to each one of the plaintiff operators in this case?

A. It went to the most of them, I think, there might have been a few of them that it didn't go to that weren't—I think there was one or two of these plaintiffs that may not have been members of the association, Ramsey wasn't but it went to the rest of them that were members as of the latter part of 1962.

Q. Did any of them come in in response to that letter to negotiate?

5252 A. No, I haven't been able to get up with them yet.

Q. At the time you wrote that letter to the operators did you know in what condition their mines were?

A. Well, not personally, no.

Q. Did you have reliable official knowledge of the conditions of their mines?

A. I had some knowledge of it.

Q. And all of them were non-operable, I believe?

A. No, I think that some of them are in operation.

Q. At the time you wrote your letter in 1965?

A. Yes, sir, I think some of them are operating now.

Q. Can you name any of these plaintiffs who had mines

in operation when you wrote the letter after June, 1965?

A. Yes, sir. Howard Higgins, Willis Flynn, Marshall Meeks, I believe the Nunleys, I believe they are running.

Q. Were those the same mines that were in operation at the time production was stopped on December 26th, 1962?

A. I think so. In some respects Howard Higgins, I think was operating in the Pocket and also on Grays Creek, and I am informed that he cut into the old mine that was formerly opened in the Pocket and he cut into it from the Grays Creek area; and I understand Marshall Meeks
5253 is back in the same mine or adjacent to it on Tennessee Products property; and the Nunleys, I think, are in the same general area on Tennessee Products in the Reel's Cove section or Griffith's Creek section, whichever it is called.

* * * * * * * * * *

REDIRECT EXAMINATION

By Mr. Rayson:

Q. Mr. Turnblazer, was Grundy Mining Company in operation at the time you wrote this letter after June of 1965?

A. Yes, sir.

* * * * * * * * * *

5254 Q. All right. Mr. Kelly asked you whether any letter was received from the International Union in connection with the Sewanee Coal Operators negotiations or that association. In my file I found this paper and I will ask you if you can identify that.

A. Yes, sir, that is a copy of a letter that was sent to me and the original was sent to Mr. Ridings, which I received sometime in October, 1962, from Mr. W. A. Boyle.

Mr. Rayson: We offer that as an exhibit to Mr. Turnblazer's testimony.

The Court: Exhibit 430.

(The letter referred to above was marked D-430 and received in evidence.)

* * * * * * * * * *

5474 Mr. Owens: Your Honor, we would like to read from the deposition of Mark Eastin, Jr., which was taken on September the 11th, 1962. It is very short. Beginning on Page 13, Line 5.

MARK EASTIN, JR.

DIRECT EXAMINATION

(Mr. Owens read the questions and Mr. Combs the answers.)

"Q. Again, Mr. Eastin, referring now to that
5475 period of time prior to either February 15, '54, or March 1, '54, I believe you have told us that you were the executive vice president and Mr. Love was president?

"A. That is correct, Mr. Hooper Love.

"Q. Prior to these dates had the West Kentucky Coal Company had any negotiations at all with the United Mine Workers of America?

"A. Yes, we had had negotiations at numerous times.

"Q. Now, I want you to, sir, if you will, to explain to us in your own words how the interest of the West Kentucky Coal Company was represented in those negotiations and by whom?

"A. Mr. Tom Hoffman carried on most of the negotiations.

"Q. What sort of negotiations were they? You having told us, to use your phrase, you were operating as 'open shop.'

"A. Well, UMW of A took the position that they represented a majority of our employees and said they wanted to enter into a contract with us. There was some elections held, I don't recall the details of them, the information is available on those elections. Again, Mr. Wheeler can probably talk about that better than I can, but in these elections there were considerable maneuvers with respect to what constituted a proper voting unit, and they had some

5476 elections where the mines were voted separately and they had an election where the mines were voted collectively, and finally, as I recall it, it was ruled that the UMW of A had won the election after a series of votes, and they called on us to bargain and we bargained for quote some length of time."

* * * * * * * * * *

Mr. Rayson: May it please the Court, at this time we offer a paper on which the tons received and used at the various TVA Steam Plants is shown and this paper also shows the weighted average price per million BTUs received at which coal was required for these plants during the period 1954 to 1963. These figures were taken from TVA annual reports and I have loaned them to opposing counsel this morning and I understand there is no objection to the introduction of this exhibit.

Mr. Rowntree: No, I take it that that is an accurate reproduction from the annual reports of TVA.

Mr. Rayson: That is my understanding.

The Court: Exhibit No. 445.

5477 (The compilation referred to above was marked D445 and received in evidence.)

Mr. Rayson: We also desire to read briefly from certain of the annual reports. The following is from the 1957 annual report of the Tennessee Valley Authority and this report is for fiscal 1957, which ends June 30th of 1957, as are the figures shown on the exhibit just introduced, those yearly dates are for fiscal periods ending June 30th of the year shown.

I desire to read from Page 31 of the 1957 annual report as follows, this is under the subject "Power Operations—Hydro Generation."

"Conditions for hydroelectric generation generally were good. They were moderately below average until near the end of January and thereafter were, on the whole, excellent. At the beginning of the fiscal year, the reservoirs were filled

to 72 per cent of the storage provided when filled to their normal maximum levels. The water in storage represented about 5.1 billion kilowatt hours."

Then continuing on Page 32, "Although the heaviest demands of the year occurred in January and February, fortunately they did not come at the times of greatest capacity reductions. Minor curtailments in loads were made and small amounts of power were secured from other systems in order to avoid starting up Watts Bar or
5478 other less efficient steam plants.

"After the flood period, water conditions were generally favorable for hydro generation during the remainder of the fiscal year and cutbacks in generation were possible at some of the new steam plants. In particular, this was true at Widows Creek Steam Plant where generation could be curtailed in the four less efficient units which do not have a reheat cycle.

"Total hydro generation was about that to be expected in an average year. At the close of the year, water equivalent to 5.4 billion kilowatt hours was stored in the reservoirs. This was 75 per cent of the normal maximum, compared with 72 per cent a year earlier."

Continuing the report on the subject "Steam-Electric Generation."

"Steam-electric generating facilities continued to operate at high efficiency. For the second year in succession the average annual heat rate was well below 10,000 BTU per net kilowatt hour generated. In the fiscal year 1957 the average rate was 9,705 BTU per net kilowatt hour, compared with 9,780 BTU the year before. The national average in the calendar year 1956 was 11,400 BTU per kilowatt hour.

"Because of the favorable hydro conditions it was unnecessary to operate the older and less efficient
5479 steam plants. Even Watts Bar Steam Plant, built by TVA during World War II, remained idle.

Memphis Steam Plant was used per minimum generation for load regulation."

I now go on to Page 33 under the subject "Coal Supply."

"The steam plants received 20.4 million tons of coal, as compared with 18.2 million tons burned, and the stockpile was increased by 2.2 million tons. At the end of the year, TVA had a 100-day supply of coal on hand, as compared with a 60-day supply at the beginning. A total of 5.3 millions tons was in storage.

"The total delivered cost for coal was $91.8 million. The average cost per ton was $4.51, as compared with $4.36 the year before. The cost per million BTU delivered was 19.36 cents, a 3.7 per cent increase over the fiscal year 1956.

"Increased coal costs reflected several factors. Miners' wages increased during the year, with some significant fringe benefits added. Several rail freight rates increased. Considerable heavy buying in the early part of the year to achieve prompt build-up of stockpiles was done in the face of unusually high prices in some supply areas. Prices in the TVA area were influenced by the national picture in which the demand for coal began a rise in the latter part of 1954 that continued through 1955 and most of 1956.
5480 It began leveling off late in 1956 and early in 1957.

"In the last half of the fiscal year 1957, after twelve consecutive 6-month periods in which demands increased, there was an increase of nearly 8 per cent in TVA's coal purchases. This resulted from the completion of the stockpile build-up plus the favorable hydroelectric supply situation.

"At the same time, prices of coal in some areas began to decline somewhat. It appeared that the rise in fuel costs, which had increased from 18.11 cents to 19.36 cents per million BTU over the past two years, would be interrupted, at least, in fiscal year 1958. Spot coal prices declined about 50 cents a ton at Kingston and John Sevier Steam Plant and about 20 cents at Widows Creek during the year. Prices in

the West Kentucky and Southern Illinois fields were trending downward at the end of the year.

"Longer-term coal contracts made in previous years have had a moderating effect on average fuel costs, both in the period of rising prices and in the recent period in which prices showed signs of declining."

On the subject of "Long-term Coal Contracts", on Page 34.

"In the past six years, TVA has customarily offered contracts for coal ranging from one to three years. In the fiscal year 1957, for the first time since 1951, bids were
5481 received on contracts ranging from four to ten years.

In May, 1957, TVA received 30 bids offering a total of 164,000 tons of coal per week, and at the close of the year five contracts for 32,000 tons per week for periods of four years to ten years had been awarded. Two of the contracts were awarded to producers in Southern Tennessee and contained special provisions designed to encourage greater mechanization in mining, particularly desirable in that field.

"Spot coal purchasing procedures were revised during the year to permit greater flexibility in quantities to be purchased from a single bid opening and closer timing of purchases in relation to need. One invitation to bid is issued each month, but bids may be submitted weekly and are opened on Friday of each week.

"Rail rates for coal transportation showed both increases and declines and affected various coal fields which supply TVA. The rates to Kingston increased 5 cents a ton. As a result of a long-term coal contract, one railroad reduced its rate on coal from Southern Illinois loaded on barges at Joppa for all plants other than Shawnee by 15 cents a ton. TVA prepared to take over from this railroad the responsibility for barging the coal from Joppa to Shawnee with the expectation of considerable savings in transportation costs. A joint rate established by three railways extended the area of supply for John Sevier

5482 Steam Plant into West Virginia for the first time and into several new Virginia districts."

From the 1958 annual report at Page 53 under the subject "Power Generation."

The Court: Which year now?

Mr. Rayson: This is for the 1958 annual report of the Tennessee Valley Authority.

The Court: All right.

Mr. Rayson: "Rainfall and runoff were above normal for most of the year, with the result that the hydro system was heavily loaded most of the time. In fact, during certain periods—January, February, late March and early April—the hydro system was used for base load operation, thus reversing the normal roles of hydro and steam power on the system.

"The reservoirs were 76 per cent full as the fiscal year began, a high level for that period, while ground water levels were also high. These factors, plus adequate steam capacity, made it possible to maintain a satisfactory level of hydro production during two low rainfall months—July and August."

I will omit the balance of that paragraph. The following paragraph reads as follows:

"As a result of good hydro conditions, it was possible to meet system loads at times with several of the large
5483 new steam-electric units shut down. Only limited use was made of the four Widows Creek units without a reheat cycle, and use of units at Colbert and John Sevier plants was limited at times. It was also possible to keep units out of service for longer periods for regular maintenance, thus reducing overtime labor costs."

On Page 53 under the subject "Coal Use and Purchases."

"The steam plants consumed 17 million tons of coal during the year, a reduction of nearly 7 per cent from the 18.2 million tons used the year before. Purchases of coal during the year amounted to 18.6 million tons, or 1.8 million tons less than the year before.

Excerpts From Annual Reports of TVA

"Purchases exceeded use by 1.6 million tons, and the stockpiles at the plants totaled 7 million tons at the end of the year. More than half the stockpile gain occurred in the last three months of the year when, because of favorable hydro supply and some decline in loads, daily average coal use declined to 41,884 tons compared with a 48,200 ton average in the preceding nine months.

"The cost of both coal received and coal burned went down slightly compared with the previous year. The lower costs were largely the result of the business recession, several freight rate reductions, reduced purchases, and increased mechanization of mines. Total cost of coal
5484 purchased during the year was $81.3 million dollars.

The cost averaged $4.49 per ton, or 18.94 cents per million BTU, about 2 per cent less than in the previous year. The cost of coal burned, including that purchased last year at higher prices, amounted to $4.54 a ton or 19.13 cents per million BTU."

I omit the next paragraph.

"In the interest of assuring an adequate, low-cost fuel supply, the TVA continued to encourage greater mechanization in mines and improvements of mining methods. A contract was awarded to a company in Tennessee for coal to be produced from experimental operation of an underground auger. This will be the first use of this equipment in the area supplying TVA, and, if successful, could lead to economical mining of some Tennessee coal where underground mining has virtually ceased because of poor roof conditions.

"Another long-term contract called for submission of a plan by the contractor for improved efficiency of his mines by mechanization. By the end of 1958, despite some delays, an experimental mine had produced sufficiently good results to prompt the contractor to begin to extend mechanization to his other mines. At present, coal is loaded by hand and hauled to the surface by mules."

Finally from the 1959 annual report under the

5485 subject "Generation at Fuel Plants" on Page 38, this paragraph:

"Compared with 1958, the cost of coal received and the cost of coal burned declined by 1.8 per cent and 1.6 per cent, respectively; however, at the end of the year coal costs had begun to rise again after a 2-year *decline*. The decline was due in part to the business recession and in part to decrease in coal purchases by TVA during the two years. By mid-year both of these influences on coal costs had disappeared. In addition, minimum wage rates for bituminous coal miners were increased by the Secretary of Labor under the Walsh-Healey Act and the United Mine Workers negotiated somewhat higher wages that took effect during the last half of the year."

On Page 39 under the title "Future Coal Supplies."

"Studies of costs of mining in the major supply areas led late in the year to an invitation to bid on longterm contracts for providing coal. This was the first longterm bid invitation since 1957. The invitation sought bids to supply up to 3 million tons of coal a year for existing steam generating facilities at major steam plants at Widows Creek and John Sevier, in quantities of 5,000 tons or more a week for terms of five to twenty years, and an opportunity to offer additional quantities for later deliveries to supply generating units which TVA might build after
5486 enactment of revenue bond financing legislation."

* * * * * * * * * *

Now I would like to read from the deposition of Louis E. Wolfson.

"Q. Would you state your name, please?"

The Court: When was this taken?

Mr. Rayson: This deposition was taken on March 30, 1965.

* * * * * * * * * *

LOUIS E. WOLFSON
DIRECT EXAMINATION

(Mr. Rayson read the questions and Mr. Combs the answers.)

"Q. Would you state your name, please?

"A. Louis E. Wolfson.

"Q. What is your place of residence?

"A. 6466 North Bay Road.

"Q. Mr. Wolfson, I believe you are chairman of the board of Merritt-Chapman and Scott, Incorporated, is that correct?

"A. Yes, I am.

5487 "Q. How long have you held that office?

"A. Since 1951.

"Q. Were you connected with Merritt-Chapman and Scott prior to that time?

"A. Yes, sir, 1949, as director."

Mr. Rayson: Would you turn to the middle of Page 5?

"Q. Were you also president of Merritt-Chapman and Scott for some time?

"A. Yes, sir.

"Q. During what period were you president?

"A. I think in 1950, I was president, and chairman of the board in 1951, and for several years, president and chairman, and then I stayed on as chairman and we elected, I think, Mr. Harvey as president.

"Q. You have remained at all times since as chief executive officer, have you?

"A. Yes, sir.

"Q. When did your company, Merritt-Chapman and Scott, acquire an interest in Tennessee Products and Chemical Corporation?

"A. I believe some time in the middle of the 1950s."

Mr. Rayson: Turn to Page 8.

"Q. Do you recall the number of shares of Merritt-Chap-

man and Scott that were issued for Tennessee Prod-
5488 ucts' shares, approximately?

"A. I think it was approximately half a million shares.

"Q. What part of Merritt-Chapman and Scott would that have represented at that time?

"A. I believe it could have been roughly 10 per cent of the capitalization.

"Q. Tennessee Products has continued as a division or department of Merritt-Chapman and Scott since then, has it not?

"A. As a subsidiary."

"Q. What part of Tennessee Products does Merritt-Chapman and Scott own?

"A. Ninety-nine plus percentage."

* * * * * * * * * *

"Q. Have you concerned yourself substantially with the affairs of Tennessee Products as chairman of the company?

"A. No, not from the operation standpoint. But from the financial end, and from the standpoint of policy, overall policy, as controlling stockholder of Merritt-Chapman, having controlling stock in Tennessee, that is the extent of my capacity in Tennessee.

"Q. Are you now the controlling stockholder in Merritt-Chapman and Scott?

"A. No, sir, not controlling. I am the largest
5489 stockholder.

"Q. I believe that your stock ownership is a matter of public record?

"A. Yes.

"Q. Is it on the order of 400,000 shares?

"A. Roughly 400,000, yes, sir.

"Q. Can you tell us who the next largest stockholder of the company is?

"A. Individual or just largest?

"Q. Either.

"A. Universal Marion Corporation. I think they have approximately 300,000 shares."

"Q. Who is the next largest individual?

"A. I don't think there are any substantial stockholders outside of — when I say 'substantial', I mean 100,000 shares or more, outside of Universal Marion and myself."

* * * * * * * * * *

Q. You have maintained approximately 10 per cent interest in the company, 8 or 10 per cent, for the last 15 years or so, have you not?

5490 "A. No, sir. For the last several years."

"Q. Do you not hold some salaried position with Tennessee Products at this time?

"A. Well, I am listed as a consultant, and they pay my expense and salary, yes. I have to say I am a salaried employee."

"Q. Is it true that you are the highest salaried person of Tennessee Products and Chemical Corporation at this time?

"A. At this time?

"Q. Yes, sir.

"A. I could be, yes."

Mr. Rayson: Turn to Page 16, please.

"Q. Do you have any recollection of the recommendations which were made by Mr. McFarlin?

"A. Confining this discussion to coal mining?

"Q. Yes, sir.

"A. I recall conversations with Mr. McFarlin about looking at the possibility of making a survey of capital expenditures to reduce our costs.

"I remember he had some labor problems and difficulties that he wanted to overcome by capital expenditures to reduce our costs, and that is, in substance, the conversation and discussion I have had with him — the problems cropping up at that time.

5491 "Q. He made known to you at some point along

the line, did he not, that the Reel's Cove Mine wa
about to be exhausted?

"A. Yes. I think that we have had some discussion
about this mine running out in a short period of time, yes
sir."

Mr. Rayson: Turn to Page 18.

"Q. What about after Mr. Baum became president o
Tennessee Products?

"A. No. The only thing, the only discussion I have eve
had with Mr. Baum is — I think we were running into th
red on our coal operation, and I asked him to come up wit
some program so that we could turn it around and get int
the black or do something with this drain on the operatio
of Tennessee.

"Q. Do you remember what that was?

"A. No, sir, not offhand, no, sir.

"Q. Did not Mr. McFarlin recommend to you that new
equipment was needed at Reel's Cove?

"A. Yes. I think that was discussed, the capital ex
penditures, yes.

"Q. Did you make capital expenditures at Reel's Cov
of any significance?

"A. I wouldn't know. I think he had a program that h
outlined to the board of Tennessee and discussed wit
5492 me that entailed substantial expenditures. I don't
know just what amounts of money.

"We usually appropriate or approve a budget for tota
money for the entire Tennessee operation, and I don't
remember what breakdown they had for the coal operation

"Q. Under your arrangement, was it necessary for th
Merritt Board to pass on all substantial capital improve
ments?

"A. No, sir. The Merritt Board went along with th
recommendation of the Tennessee Board, and I think they
had a capital expenditure committee of Tennessee, and we

also have one at the Merritt Board that approved their capital expenditures."

* * * * * * * * * *

"Q. Was it in 1957 and 1958 that Mr. McFarlin made these recommendations to you with respect to the acquisition of new equipment?

"A. I don't know the exact year but it could have been in 1957, 1958, or around that time.

"Q. Did he advise you at that time whether the equipment was inadequate for the job, equipment that
5493 Tennessee Products then had?

"A. I believe that he wrote me or discussed with me their need for capital expenditures, substantial capital expenditures, which would put them on a competitive basis and reduce his costs."

* * * * * * * * * *

"Q. Mr. Wolfson, we were discussing a moment ago the capital expenditures made by Tennessee Products upon the advancement of monies by Merritt-Chapman and Scott. Could you tell us what those improvements were?

"A. Well, I wouldn't know what the improvements are but I know that we supplied substantial funds for building the ferroalloy plant and from time to time we supplied other funds and I just don't remember exactly what the breakdown allocations are.

"Q. The principal improvement that you have made in Tennessee Products since Merritt's acquisition of Tennessee has been in connection with the ferroalloy plant, however?

"A. Yes, sir.

"Q. Is this a plant at Rockwood, Tennessee?

"A. Yes, sir.

"Q. Was this not made about 1956 or thereabouts?

"A. Thereabouts, yes, sir.

"Q. Was Tennessee Products a profitable opera-
5494 tion when you first acquired it?

"A. Yes, sir.

"Q. Did it subsequently become unprofitable?

"A. Yes, sir.

"Q. Has it ever regained a profitable position?

"A. Now, what are you talking about? Substantial? Going back to where it originally was?

"Q. That is right.

"A. It never reached it, no, sir.

"Q. Have you had occasion to make an explanation of why it has become unprofitable?

"A. An explanation to who?

"Q. Public explanations?

"A. Yes. I think we issued statements to our stockholders saying that we have had strikes. We have had difficulties, and we pointed out similar reasons that Tennessee has not been profitable.

"Q. You referred to strikes. I will ask you if the principal reason that you have given in explanation for the unprofitable situation in which Tennessee Products found itself was the decline in the steel market for some several years following your acquisition of Tennessee Products?

"A. That could have been one of the reasons, too, yes, sir.

"Q. I will ask you if that was not repeatedly given as the principal reason for the decline in Tennessee
5495 Products' position?

"A. That was given as one of the reasons, yes, sir."

"Q. Mr. Wolfson, apart from what you have stated in public pronouncements to your stockholders or to others, is it not a fact that the softness in the steel market was the principal reason for the decline in the profit situation at Tennessee Products?

"A. I think we stated that, yes, sir."

"Q. Are the strikes that you referred to a moment ago, strikes which occurred at Rockwood, Tennessee?

"A. Yes, sir.

"Q. Do you know which union represents your employees at Rockwood, Tennessee?

"A. No, sir.

"Q. Do you know that it is not the United Mine Workers?

"A. Well, I wouldn't think it would be United Mine Workers in a ferroalloy operation."

* * * * * * * * * *

"Q. In 1958, 1959, 1960, did it become necessary for Merritt to curtail its capital expenditures?

"A. Well, I don't know the exact years, but I know that the profit changed so drastically at Tennessee, that we curtailed capital expenditures to the point that we examined and did some real investigation on any recommendations made for any capital appropriations for Tennessee."

5496 "Q. If during 1958 a reasonable recommendation had been made to your board with respect to the improvements of coal mining at Whitwell or a new mine at Whitwell, you would not have declined it simply because you did not have enough money to expand?

"A. No. We would have investigated it and taken a good look at it, and if it could have been appropriated and expanded to develop some more profit, we certainly would give serious consideration to it.

"Q. It is true, however, is it not, Mr. Wolfson, that during the latter part of the period I mentioned, specifically in 1960, that your company, Merritt-Chapman and Scott, experienced a very substantial loss, is that correct?

"A. Yes, sir.

"Q. And further financing operations, your financing operations were such that there was a substantial restriction on your dividend policy, was there not?

"A. Well, whatever that loan agreement covered—I think we entered into a 20 million loan agreement, group insurance company, and whatever the restrictions, dividend

restrictions, were covered in that agreement, was the onl restriction we had.

"Q. Did Mr. McFarlin ever discuss with you the com petition that his company was experiencing fro
5497 other companies which used the equipment made b another division of Merritt-Chapman and Scott?

"A. In what division?

"Q. The Marion Shovel Division. Did you not have division known as that at one time?

"A. Yes. I don't recall. He could have, but I just don' recall any specific discussion on that.

"Q. How long did your company own Marion Shove Company?

"A. I think we owned it for a couple of years.

"Q. Was that company engaged in the manufacture o earth-moving equipment?

"A. Yes, diversified earth-moving and cranes an shovels.

"Q. Did it sell its equipment to coal mining concerns?

"A. Yes, coal mining and contractors and so forth.

"Q. Did it manufacture some of the largest strip mining machinery in use in the United States?

"A. Yes, sir.

"Q. Did you dispose of Marion at some point after your acquisition of it?

"A. Yes, sir."

* * * * * * * * * *

"Q. Mr. Wolfson, I believe you said from time to time that in organizations such as Merritt, it is necessary
5498 to prune out some of the businesses so as to strengthen those which are the most profitable, is that correct?

"A. Well, yes. We have followed that policy that if a division cannot operate profitably, we have to prune them out or make necessary changes to make it profitable.

"Q. Pursuant to that policy over the last ten years, you have sold some very large parts of Merritt, have you not?

"A. Well, we have sold, but not from the standpoint of pruning it out. If we get a satisfactory price, and we thought the value was there, we just sell. We recently sold Devoe and Reynolds at a substantial price above book, at a price we thought was an excellent price, so that was not pruning out any division.

"Q. You have sold some parts of Tennessee Products, have you not?

"A. Yes, sir, we did.

"Q. Can you tell whether Tennessee Products was such that its Ferroalloy Division would use the product of the Coal Mining Division?

"A. Yes. It would use coke and it was essential to the ferroalloy operation, our coal mining.

"Q. Is it or not true that when that division, that is, the Ferroalloy Division, declined in its productivity, that as a chain reaction the coal mining operation at Whitwell declined and vice versa?

5499 "A. I wouldn't know, but I would assume it could have, but I just don't know."

"Q. What about the chemical end of Tennessee Products?

"A. We have disposed of the chemical end.

"Q. Was it not one of the users of the coal produced by the company?

"A. I don't know to what extent. It could have been, but I don't know to what extent.

"Q. Do you recall when you disposed of the chemical part of Tennessee Products?

"A. Within the last few years.

* * * * * * * * * *

5500 "Q. Mr. Wolfson, did you know whether there were small mines on the Tennessee Products coal land in and about Whitwell, as well as a large mechanized mine?

"A. They call them little truck mines?

"Q. Yes.

"A. I heard of it, yes.

"Q. Did you have any particular knowledge of those truck mines or how they operated?

"A. No, sir.

"Q. Did you know, did it ever come to your attention that these mines were operated by men who were not receiving the minimum wage?

"A. No, sir, I wouldn't know that.

"Q. Did it ever come to your attention that Tennessee Products was required to pay from $35,000 or
5501 $50,000 or $60,000 to these men for minimum wages?

"A. No, sir.

"Q. Under the direction of the Department of Labor?

"A. No, sir.

"Q. Was it ever reported to you that Tennessee Products—I now speak of 1957 or 1958 or thereabouts—that Tennessee Products was in danger of being blacklisted by the Department of Labor so that the company could not sell its products to the United States Government or to the TVA?

"A. I think I heard something along those lines, but I just don't recall specifically what they were."

* * * * * * * * * *

"Q. Mr. Wolfson, as a consultant, have you ever been called upon or have you on your own volition made a recommendation with respect to the coal mining operations at Whitwell?

"A. No, sir. I was principally consulted on financing, and that is the role I played, and policy, financing, and any general discussions on policy. That is the main thing that I was consulted on.

"Q. Do you have anyone now in the director or officer hierarchy of your company, including Merritt and Tennessee Products, who has any experience in the coal mining business?

5502 "A. I don't believe we do, no, sir.

"Q. Have you had since Mr. McFarlin, Sr. left the company?

"A. I think Carl McFarlin, Jr. had some background and knowledge, but outside of those two, I don't recall any others."

* * * * * * * * * *

"Q. Mr. Wolfson, what is the Universal-Marion Company to which you referred?

"A. Universal-Marion Company, they have Marion Power and Shovel and diversified—they are a diversified industrial company listed on the American Stock Exchange.

"Q. Is this the company whose assets you acquired at one time?

"A. No. Universal-Marion Corporation obtained Marion Power and Shovel.

"Q. Other than as a stockholder in Merritt, they have no connection with Merritt at this time?

"A. No, just as a stockholder.

"Q. Who are the principals of that company?

"A. What do you mean 'principals'? Stockholders?

"Q. The principal stockholders?

"A. I am a substantial stockholder. My family is a stockholder in Universal-Marion Corporation."

5503 "Mr. Rayson: Would you furnish as exhibits to Mr. Wolfson's deposition the copies of the annual reports of Merritt-Chapman and Scott from 1955 to date?"

Mr. Rayson: Copies have been furnished, your Honor, we will introduce those in a moment. Page 43.

"Q. Mr. Wolfson, is the business of Universal-Marion Corporation earth-moving equipment?

"A. That is just part of it. They have a steel division. They build railroad component parts, parts of railroad cars. They have an industrial supply company, Southern Pipe and Supply Company. They have a land division. It is a pretty diversified company."

Mr. Rayson: Turn to Page 45.

"Q. What is your interest in the Universal-Marion Corporation?

"A. What do you mean 'interest'?

"Q. What is your percentage of ownership there?

"A. Personally?

"Q. Yes, personally and family.

"A. Well, you read a proxy and its different percentages. I would say just roughly around 25 per cent.

"Q. Twenty-five per cent?

"A. Just roughly. I have seen it where they say 30. To my knowledge it's roughly 25."

* * * * * * * * * * *

5504 Mr. Rayson: That concludes the deposition, your Honor. We now offer the annual reports of Merritt-Chapman and Scott, 1955, '56, '57, '58, '59 and '60, '61. I'd like to read briefly from these reports.

The reports near the end have a statement of each of the companies in Merritt-Chapman and Scott and one of these on a 2-page spread is the discussion of the various business activities of Tennessee Products and Chemical Corporation for the year 1955. It contains this statement about "Coal and Coke: Improved productivity and the opening of additional mines on TP&CC property resulted in a higher return on the company's coal mining operations than in 1954, despite two prolonged work stoppages—one due to a 53-day railroad strike, the other to a wage dispute primarily involving other mines in the Whitwell, Tennessee, area."

In 1956, again referring to the section on Tennessee Products on Pages 26 and 27 of the report, this paragraph on "Coal and Coke: Shipments from the Whitwell, Tennessee, coal mines substantially outstripped all previous records, as well as the result of near-capacity operations, with no work stoppages of any consequence."

In 1957, again referring to the Tennessee Products
5505 and Chemical section on Page 28—

Mr. Rowntree: (Interposing) We do not concede,

your Honor, that these admissions are binding on us as plaintiffs in this action.

The Court: Yes.

Mr. Rayson: In the paragraph on "Coal."

"A year of excessive rainfall that enabled regional utilities to make greater use of hydroelectric power was one of several factors combining to keep Tennessee's coal production below the record 1956 level. Industry interest centered on announcement by Tennessee Valley Authority of plans to construct an additional 500,000 KW generating facility at the TVA Widows Creek Steam Plant, a short distance from our Whitwell coal mines."

1958, the section on Tennessee Products on Page 28 and 29:

"At year-end, the picture was encouraging. All 19 electric furnaces at the company's three ferroalloys plants (Rockwood, Chattanooga and Houston, Texas) were producing at operational capacity, and one of the two pig iron blast furnaces at Rockwood that were idle through most of 1958 had been restored to operation. As a related chain reaction, Tennessee coal mining operations and production of coke also rose substantially."

From the 1959 annual report the section on Ten-
3506 nessee Products and Chemical Corporation, Pages 28 and 29 of the report.

"Final settlement of the steel strike early in 1960 brought encouraging promise of a recovery trend for Tennessee Products and Chemical Corporation after two successive years of sharply depressed earnings resulting in setbacks in the steel industry."

Omitting a paragraph.

"Earnings of TP&CC are tied closely to production levels of the steel industry since the major share of its diversified business volume lies in the manufacture of ferroalloys, pig iron and coke. When steel production plummeted midway through 1959 as a result of the 116-day strike, the impact on Tennessee closely followed the pattern of 1958, when steel

was at an ebb through most of the year because of the severe business recession."

1960, the section in this report on Tennessee Products and Chemical Corporation is found on Pages 16 and 17, this paragraph:

"Following final settlement of the nationwide steel strike, 1960 had started with promise of a recovery trend for Tennessee after two successive years of sharply reduced metallurgical earnings; in 1959, as a result of the industry's prolonged strike, and in 1958 as a result of the recession. The generally expected boom lost its momentum by the
5507 end of the first quarter, however, and steel production thereafter hovered around 50 per cent of capacity. Stainless steel production, which normally accounts for a large share of Tennessee's ferroalloy sales, was even more severely depressed, operating through most of the year at less than 25 per cent of capacity. As a consequence of depressed conditions in the steel industry, Tennessee's coal mining operations also were reduced."

This report on Page 9 shows that in that year Merritt-Chapman and Scott lost $52,121,700.

From the 1961 report, the pages do not appear to be numbered, the section on Tennessee Products and Chemical Corporation, this paragraph:

"As anticipated, total production declined as preparations progressed to close Reel's Cove Mine when it became worked out early in 1962. Plans to open a replacement facility were started three years ago, and output meanwhile has been increasing from more than ten smaller mechanized mines started since 1958."

We offer these annual reports of Tennessee Products as an exhibit.

The Court: Exhibit 446.

(The annual reports referred to above were marked D446 and received in evidence.)

Mr. Rayson: We now offer the annual reports of
5508 the Universal-Marion Corporation for the years

1958, 1960 and '63. I might recall that the plaintiffs have offered, among other things, a picture of a steam shovel or shovel of some sort operated by Peabody Coal Company called "Big Paul." This shovel is referred to on Page 10 of the Universal-Marion report in 1958 and beside a picture of a shovel this language appears, "The 70-yard 'Big Paul' is one of five type 5760 stripping shovels delivered in the last three years. The combined capacity of these machines would enable them to dig as much earth and rock as was required for the entire Panama Canal in approximately 25 months."

Mr. Rowntree: You don't think our plaintiffs had anything to do with this, is that your contention?

Mr. Rayson: Of course, your Honor, we offer it with regard to the offering made by the plaintiffs showing the very same shovel. We offer it also in connection with the fact that this shovel was built by a company formerly owned by the same company which operates these coal mines.

Mr. Rowntree: That point we disagree with.

Mr. Rayson: And which is now operated by the substantial and controlling stockholder in both of these companies. We think that it has more than a passing relevance to the issues in this case.

The Court: All right. Exhibit No. 447.

Mr. Rayson: I wonder if we might introduce the
5509 1960 and 1963 annual reports as a part of that exhibit, your Honor?

(The reports referred to above were marked D447 and received in evidence.)

Mr. Rayson: Without reading it, I refer to the language in the 1960 report discussing the Marion Power Shovel Division of Universal-Marion and from Page 9 of the report of 1963 I refer specifically to this language, "To design more efficient machines for today's coal mining industry, the Marion Division and the Peabody Coal Company collaborated in planning the Type 6360 shovel."

We offer these reports as an exhibit to Mr. Wolfson's deposition.

Your Honor, also furnished as a part of Mr. Wolfson's deposition were a number of reports and other letters which had been mailed to him and also which he had received copies of during the period of years. Without reading these I would like to introduce them as an exhibit to his deposition.

The Court: Without objection they may be filed as Exhibit 448.

(The documents referred to above were marked D448 and received in evidence.)

Mr. Rayson: There are a number of these, your Honor, as I said, that I don't think it will be particularly
5510 helpful to read them. We would like to refer to them in brief, however.

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The next is a letter to Mr. Robert E. Harvey, Sr., Executive Vice President of Merritt-Chapman and Scott, dated November 13, 1957, from Mr. Wolfson. I might read this one to your Honor.

"In acknowledging receipt of copy of your memorandum addressed to John Campbell, I have noted a couple of errors and I am taking the liberty of correcting them.

"First of all, Carl McFarlin, Sr. did not call
5511 me—I called him and discussed several matters with him. In that telephone conversation I mentioned that, due to our lower earnings, we are going to reduce our capital expenditures for Tennessee during 1958 even if we have to start using baling wire on some of our equipment."

Mr. Rowntree: I'd like to finish that letter.

Mr. Rayson: Go right ahead.

Mr. Rowntree: "I mentioned in the conversation the two specific projects he has mentioned—one, pollution in the amount of $175,000 and the other, expansion of the coal mines in the amount of $150,000. He, in turn, mentioned

to me that he may be able to postpone the coal mining capital expenditures in 1958 but was not sure and would let me know."

Mr. Rayson: The next is a letter addressed to Mr. Carl McFarlin, Sr. from W. A. Moody, dated January 31, 1958. This has to do with the Walsh-Healey Public Contracts Act. I will read a portion of this:

"In the spring of 1957, the mines were investigated by the Wage and Hour Division of the Department of Labor and that department alleged violations of the payment of minimum wage and overtime, and alleged failure to maintain adequate and accurate wage records. The department also made a serious charge that the mines were being operated in violation of safety standards promul-
5512 gated by the Bureau of Mines. Although only 35 mines were investigated, since October, 1954, approximately 140 mines have produced coal for shipment on government contracts. The government alleges wage violations approximating $1,000 per mine, or a potential arrears in wages of $140,000."

Mr. Rowntree: We object to that for the truth of any such allegation or charge.

The Court: All right.

Mr. Rowntree: I would like to read some more of this. "In the event the government is successful in sustaining all or any one of the alleged violations, the entire corporation would be subject to blacklisting from participating in government business for the period of three years. Blacklisting is discretionary with the Secretary of Labor and the Federal Courts will not reverse his action, if there is any evidence to support him.

"In order to avoid a hearing and possible black-listing, we have been negotiating with the Wage and Hour Division for several months. We hope to settle the issue by arriving at an acceptable money settlement, by correcting safety violations when possible, and by closing those mines that we cannot bring into compliance."

Mr. Rayson: We read now from the president's report of Tennessee Products and Chemical Corporation and subsidiary dated July, 1960. This is a rather lengthy
5513 report, however, only information pertaining to coal is found in the copy given to us and I read these paragraphs:

"In regard to the Walsh-Healey complaint on our coal mining operations, a pre-trial conference was held on August 11 with the Labor Department, and settlement of the wage factors involved was determined. Of the 1,128,000 tons of coal delivered to the government, on which the Labor Department was registering the complaint, only 3.86 or 43,500 tons were the liability of the company. Settlement of this amounted to $3,520, with assessments being made against the Mount Olive Coal Company in the amount of $16,240 and Holly Branch Coal Company in the amount of $16,800. In order to promptly settle the complaint, it was necessary for the company to loan these amounts to these partnerships. In view of the prompt wage settlements, and also on the advice of the hearing examiner to the effect that he had determined that no major safety violations were involved in the company's mines presently operating, it is extremely unlikely that any blacklisting penalties will be involved at the formal hearing on September 22nd.

"It is interesting to note that this penalty amounts to only 8 cents out of the 50-60 cents royalty on the 43,500 tons out of 1,128,000 tons involved in the five government contracts."

Of course, your Honor, we offer that as proof of
5514 the matters therein asserted as proof that that settlement was made and the reasoning of the company behind it.

Next is a report dated March 2, 1961, to Mr. Robert E. Harvey, President of Merritt-Chapman and Scott, from Rolland O. Baum, President of Tennessee Products. This report is dated March 2, 1961, "Reel's Cove Mine operated

Excerpts From Minutes of Tennessee Consolidated Coal Company

at full capacity, rather than 50 per cent as anticipated, due to increased requirements by Republic Steel, while truck mines were slightly lower than forecast."

* * * * * * * * * *

5515 Mr. Rayson: May it please the Court, we have one remaining thing that we would like to do and that is to read briefly from certain minutes that have been given to us of Tennessee Consolidated Coal Company. You may want to follow me. I am reading a portion of the document on the letterhead of Tennessee Consolidated Coal Company dated May 19, 1954, entitled the "President's letter to the stockholders for the year 1953." The sentence is entitled "Labor Relations."

"The national agreement with the United Mine Workers of America, which became effective October 1, 1952, remained unchanged during the past year. It remains on 60-day notice. On the local level continued improvements throughout the year in relations between the company and its employees was reflected in a marked reduction in grievance cases and disappearance of local strikes in the latter months of the year and increased productivity of workers. The same daily wage for an 8-hour portal-to-portal of approximately $20 per day is still being paid, as well as approximately 40 cents per ton into the United Mine Workers Welfare Fund, which amounts to $103,616. The vacation pay of $100 per man or $16,235 equivalented to
5516 $23.97 per share. I wish to further remind that these payments were not for productive work.

"The management again repeats, as in former reports, that if wage contracts and labor laws were the only two factors that management must consider the company's labor policy would be a simple matter, but management's business is composed of a large array of other elements. An assortment of apparently unrelated details come to the attention of the men who direct the business affairs of the company.

Therefore, each detail must be arranged in proper relation to all others before management can appraise the company's position. Therefore, to keep your company competitive, management must familiarize itself with other companies in the business of mining and marketing of coal and as all districts have their special problems: The type of coal, mining conditions, location of mines, available markets, and other factors make the situation of every company different from that of all others.

"The demand for coal depends largely on industrial activities, but this does not necessarily mean a demand for coal, as it is only one of several sources of energy. The main attack on high productive costs has been to increase productivity and in this attempt we have gone to mechanizing the mines on a unit cost basis. The aim is to
5517 get more out per man and per machine or get to get more out per hour of working time. After all, the consumer is after the lowest cost of the product delivered at his plant. The management realizes that mechanization will be the coal production setup for the future, therefore, your company is endeavoring to make tomorrow today.

"By order of the Board of Directors, respectfully yours, Stanlee Hampton, President."

The report to the stockholders for the year 1955, dated May 16, 1956. I read only one paragraph.

"The management again repeats, as in former reports, that if wage agreements and labor laws were the only two factors that management must consider the company's labor policy would be a simple matter, but management's business is composed of a large array of other elements. An assortment of apparently unrelated details come to the attention of the men who direct the business affairs of the company. Therefore, each detail must be arranged in proper relation to keep your company competitive.

"Management must familiarize itself with other com-

panies in the business of mining and marketing of coal, as all districts have their special problems: The type of coal, mining conditions, location of mines, available markets and other factors make the situation of every company different from that of all others. The demand for coal de-
5518 pends largely on industrial activities but this does not necessarily mean a demand for coal as it is not the only one of several sources of energy. The main attack on high productive cost has been to increase productivity and in this attempt we have gone to mechanizing the mines on a unit cost basis. The aim is to get more out per man and per machine or to get more out per hour of working time. After all, the consumer is after the lowest cost of the product delivered at his plant. The management realizes that mechanization will be the coal production setup for the future, therefore, your company is endeavoring to make tomorrow today. Continuous mining machines have not been developed that will work successfully in our size Sewanee seam coal but the manufacturers are being pressed by your company to make such a machine available."

This paragraph from a called meeting of the board of directors in July of '61.

"As the next order of business Mr. Callis read from a memorandum dated July 27, 1961, by him to Mr. Everett Roberts regarding truck mines on company property and in which he asked Mr. Roberts to furnish the board of directors the names of the operators and/or the owners of the names of all persons having financial or interest of any kind in these mines. He then asked Mr. Roberts if he had prepared this information for the board. Mr. Roberts stated that it would have taken a lot more
5519 time than he had to have gotten this information together and, furthermore, he did not know the names of all interested parties. Mr. Callis then reviewed the circumstances that led to the opening of the truck mines

and their subsequent operation. He then stated that it was his understanding that Mr. Everett Roberts, Sr. and Jr., Fred Morrison and Fred Widman all had financial interests in one or more of the mines operating on company properties. He also stated that it was his opinion that these interests extended to at least seven of the nine mines authorized to operate on the company's property in the Pocket area.

"Mr. Callis then called attention to the acceptancy of the presidency of the company on the condition that there be no conflict of interest between any director, officer or employer or stockholder of the company and the company."

* * * * * * * * * *

5522 EDWARD NUNLEY,

a witness called at the instance of the plaintiffs in rebuttal, being previously duly sworn, was examined and testified as follows:

* * * * * * * * * *

5524 CROSS EXAMINATION

By Mr. Rayson:

* * * * * * * * * *

5526 Q. It was your East Valley coal that was inferior, wasn't it?

A. That's what I bid it on, East Valley coal.

Q. And Whitwell coal was the good coal?

A. It was good coal.

* * * * * * * * * *

5542 Mr. Combs: Now, just one moment. Counsel, in connection with Mr. Boyle, on the rebuttal part of that, the question of Mr. Boyle was whether or not he had made a statement that the Robina explosion may have been caused because it was mechanized beyond the point of explosion and he said he didn't say that, if he did and it was quoted that way that he was misquoted.

Mr. Rowntree: I am not challenging his veracity about the statement.

Mr. Combs: I wanted that clear because it is not consistent with Mr. Boyle's statement. He is talking about the industry here and the statement that you asked him about had to do with that particular explosion.

* * * * * * * * * *

5553 Mr. Combs: If your Honor please, we have one witness that we would like to have for sur-rebuttal. We call Mr. Turnblazer, please.

WILLIAM TURNBLAZER,

a witness called at the instance of the defendant in sur-rebuttal, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rayson:

Q. You are William Turnblazer, who has previously testified in this case?

A. Yes, sir.

Q. Mr. Turnblazer, I direct your attention to the fall of 1955. I will ask you if you had occasion to have a conversation with Mr. Callis during the fall of the year?

A. Yes, sir, I did.

Q. Where did that occur?

5554 A. I don't recall whether it occurred in Chattanooga or it occurred in Nashville, but I met him on the street and we got into a long discussion.

Q. Would you state what that discussion was?

A. It was in the fall and he was discussing the situation with respect to TVA and in sum and substance he stated that they had the TVA licked, that he had talked with the NC&St.L. Railroad and they weren't going to deliver any coal over a picket line in that area.

Q. Did he ask for any agreement or did you discuss this matter with him?

A. I didn't discuss it. I said, "That seems to me to b very foolish."

Q. Did you have anything else to say to him?

A. We discussed in general the weather and everythin else but that was the main subject that he was talking o at that time.

* * * * * * * * * *

5559 Mr. Combs: Now, we renew our motions to strik evidence made at the close of the plaintiffs' case. W also move to strike all of the evidence pertaining to an and all activities introduced by or on behalf of plaintiff which do not connect the Defendant United Mine Worker of America with such activity.

Now, we set out in our motion our reasons and ou authorities and we renew the motion that we made at th close of the plaintiffs' case and, of course, base the basis of that motion now after all of the evidence is in that the motion should be granted with reference to striking that type of evidence and we renew that motion.

Now, we renew our motion made at the close of the plaintiffs' case at this time to dismiss based upon all of the evidence in this case.

The Defendant United Mine Workers of America now renews its motion to dismiss the instant action against it as to plaintiffs and each of them upon the ground that upon such facts and the law neither plaintiffs nor any or either of them have shown any right to relief.

In support hereof the defendant assigns each and all of the reasons assigned in support of its dismissal motion made at the conclusion of the plaintiffs' case in chief, except that the motion now relates to all of the evidence in the case and except also that as an additional reason we add

5560 to No. 8, Section 6 of the Clayton Act, that is, No. 8 of our ground for dismissal, we add Section 6 of the Clayton Act, 15 USCA 17, so as to make that read thus, now.

that is Paragraph 8 of our original motion to dismiss, and it would read this way, Paragraph 8:

"Plaintiffs, and each of them, have failed to establish by such proof as aforesaid that the United Mine Workers has forfeited its exemption from the liability under the Sherman Antitrust Act pursuant to Sections 6 and 20 of the Clayton Act and Section 4 of Norris-LaGuardia Act."

Now, we also, if your Honor please, renew our motion to strike evidence concerning coal sales to the Tennessee Valley Authority and to other markets and any other alleged predatory pricing practices on the part of the so-called co-conspirators or any alleged co-conspirator operators in this case or any other operators in this case on the ground that there was any connection whatsoever with any practices, if any did occur, that the Mine Workers participated in those actions or had anything to do with them. We would like to also renew that motion.

That closes our case.

* * * * * * * * * *

5572 Mr. Rowntree: May it please the Court, this must necessarily be somewhat of a shotgun type of argument and I am somewhat numb after these five and a half weeks. I think that this case must be approached in the final analysis from a bird's-eye point of view as it is well established under the Sherman Act cases that the whole proof must be looked to and not the segregated parts in the final analysis. The Continental Ore Company decision two terms ago by Mr. Justice White was the last case enunciating this firmly fixed rule.

Now, we think that it has to be taken largely from the focal point of the Pennington decision by the Supreme Court. The Court there said that a union forfeits its exemption from the Antitrust Law when it is clearly shown that it is agreed with one set of employers to impose a certain wage scale on other bargaining units.

There is nothing in the labor law indicating that the union

and the employers in one bargaining unit are free to bar
gain about the wages, hours and working conditions of eithe
bargaining unit or to attempt to settle these matters for th
entire industry. On the contrary, the duty to bargain uni
by unit leads to a quite different conclusion. Th
5573 union's obligation to its members would seem bes
served if the union retained the ability to respon
to each bargaining situation as the individual circumstance
might warrant without being strait jacketed by some prio
agreement with favored employers.

We think that this decision must be fitted into the prede
cessors decisions under the union's exemption, particularl
with respect to the Allen Bradley decision and the Car
penter case.

The Court: Well, let me ask, do you think that languag
encompasses first industrywide bargaining?

Mr. Rowntree: It encompasses an attempt by one -- yes
where it is shown that the union is acting pursuant to a
understanding with the principal industry in the country
or the principal group of companies in the industry.

The Court: Well, I was coming to that next. First,
was going to ask you whether you thought that languag
would pertain to industrywide bargaining and, second
whether it would pertain to a national contract?

Mr. Rowntree: It would not pertain to industrywide bar
gaining per se. I think that in some industries industrywid
bargaining would be carried out without running any
5574 danger of the Sherman Act in industries where the
employee group or the employer groups in the vari
ous parts of the country are on an equal competitive basis
and would be on an equal competitive basis after the ap
plication of that national contract.

I think it is true that there are industries, such as the
coal industry, where it is well known and well established
that there are different working conditions involved, there
are different means of production available to the different

groups of companies or different areas of the country involved, where the application of a national contract or an industrywide contract is going to have severe repercussions on the competitive positions of the different companies and I think necessarily there must be considered in determining whether there is an understanding between the national union and the dominate employers that deal with that union where there is an agreement between those two, you must necessarily look to the effects of the national contract on the various parts of the country and the different groups of employers involved who must, in varying degree, stand and in varying competitive positions stand the impact of that national contract.

I think in the coal industry this is a prime example of the unfairness of the nationwide contract. There are areas of the coal fields that have been tied to the bituminous
5575 coal industry for decades with coal communities completely dependent upon the survival of that industry for their ordinary means of life and carrying on of the social order where law and society will completely break down if the industry does not survive. There are local areas thus tied to the suits for decades that are affected by this problem and I think we see it all the way up and down the Appalachians and particularly in this coal field here, for I think the proof shows very clearly the inability of this field and the conditions found here to survive under the national contract terms and this is true in other areas to varying degrees, but we think the extreme degree is here.

I think that the Supreme Court has looked at that situation and has come up with this situation in Pennington because of the obvious devastating effect of this national contract on whole areas.

The Court: Well, is it your contention or not that in bargaining the union must recognize and not substantially alter the competitive relationships that exist between various coal fields?

Mr. Rowntree: If it does it to a drastic extent it is going to run afoul of the Sherman Act and run into dangers with respect to what sort of understanding it has with the favored employer group towards whose condition it aims its wage terms and its collective bargaining conditions
5576 in the contract. I think this must necessarily be so.

I think that the impact of the national contract to extreme disadvantage to broad areas or to vastly different competitive situations in an industry must necessarily be taken into consideration in determining whether or not there is an understanding between the union and the favored employers.

Now, I do say that there must be a finding of this understanding on all of the proof and all of the circumstances in the case, that there must be a finding of an understanding, a working agreement, a conspiracy between the union and some employer group, and I think it must necessarily be so, as I have said, that the impact of the national contract on these different segments of the industry must be taken into consideration and will have a strong impact on the question of whether there is that understanding and I think the effect on whole areas, whole communities, such as in this case, must necessarily be taken into consideration.

* * * * * * * * * *

EXHIBIT D125

PROCEEDINGS OF CONVENTIONS OF THE UNITED MINE WORKERS OF AMERICA

Year 1934

. . .

JOINT REPORT OF INTERNATIONAL OFFICERS UNITED MINE WORKERS OF AMERICA

To the Officers and Delegates of the Thirty-Third Constitutional Convention of the United Mine Workers of America:

GREETINGS:

. . .

P. 29-30:

BITUMINOUS COAL CODE AND WAGE AGREEMENT

Succeeding the effective date of the Act, the representatives of the United Mine Workers of America joined with coal operators from some fourteen bituminous coal producing States in presenting to the National Recovery Administration what later was known as the General Code of Fair Competition. The Appalachian group of operators, consisting of producers in Ohio, Central and Western Pennsylvania, West Virginia, Eastern Kentucky, Tennessee and Virginia, elected to present their own code. Other smaller groups of operators throughout the country, from time to time, presented codes until the Recovery Administration had on file some twenty-five or more. The Recovery Administration thereupon called conferences of the proponents of the various codes and representatives of the United Mine Workers of America, which conferences continued over a period of many weeks. Under the auspices of General Hugh S. Johnson, Administrator of the National Recovery Act, and later of President Roosevelt himself, wage negotiations between the representatives of the United Mine Workers of America and the Appalachian group of operators ensued. These negotiations culminated in the negotiation of a wage agreement with the Appalachian group of operators, which was signed in Washington on September 21, 1933. This agreement covered approximately 314,000 men and became the basis for a Code of Fair Competition for the

bituminous industry as agreed between the operators and the National Recovery Administration.

(Following the signing of the basic agreement on September 21, supplemental district agreements were negotiated locally in the various districts of the Appalachian area.)

. . .

P. 32:

Your representatives, in all of the negotiations with the bituminous operators and representatives of the government in 1933, continuously urged the adoption of the six-hour day and the five-day week, as well as the elimination of regional wage differentials.

. . .

P. 33:

There is appended to this report, for the information of the delegates and as a means for future reference, the following:

(A) Copy of the National Industrial Recovery Act.

(B) Copy of the Appalachian Agreement, covering the bituminous coal fields of Ohio, Central and Western Pennsylvania, Northern and Southern West Virginia, Eastern Kentucky, Tennessee and Virginia.

(C) Copy of the Code of Fair Competition for the Bituminous Industry.

. . .

P. 61:

NATIONAL INDUSTRIAL RECOVERY ACT

[PUBLIC—No. 67—73D CONGRESS]

[H. R. 5755]

AN ACT

To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

. . .

P. 95:

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

BITUMINOUS COAL INDUSTRY

AS APPROVED BY PRESIDENT ROOSEVELT
IN EXECUTIVE ORDERS OF SEPTEMBER 18, 1933, AND
SEPTEMBER 29, 1933, INCORPORATING SO FAR AS
POSSIBLE THE CONDITIONS OF THE EXECUTIVE
ORDERS IN THE TEXT OF THE CODE

1. **Executive Order—September 18, 1933**
2. **Executive Order—September 29, 1933**
3. **Executive Order—September 29, 1933**
4. **Letter of Transmittal**
5. **Report of Deputy Administrator Simpson**
6. **Text of Code**
7. **Schedule A**

. . .

P. 97-98:

EXECUTIVE ORDER

. . .

(4) . . . the Code of Fair Competition for the bituminous coal industry is hereby approved.

Franklin D. Roosevelt

. . .

SEPTEMBER 17, 1933.

P. 99-101:

GENERAL HUGH S. JOHNSON,

Administrator, National Recovery Administration,
Washington, D. C.

DEAR SIR: I present herewith for your consideration and

recommendation to the President the Code of Fair Competition for the Bituminous Coal Industry.

Efforts were under way to secure the co-operation of the Bituminous Coal operators prior to and in anticipation of the passage of the National Industrial Recovery Act.

The state of utter disorganization in the industry involving the prevalence of unfair competitive practices, particularly in the payment of low wages in order to permit of unreasonably low coal prices, furnished a good example of the effects of unrestrained competition in an industry capable of great overproduction in relation to existing consumer demands. In numerous ways the Bituminous Coal Industry has furnished more convincing evidence of the need for the integrating force of the National Industrial Recovery Act than any other industry in the nation.

The initial and immediate activity of the Administrator and the present writer after your appointment was an effort to bring about a greater co-ordination and co-operation between the operators in the different sections of the country in this industry and largely in response to this effort there came into being the Northern Coal Control Association and the Smokeless Appalachian Coal Association, representing almost all producers in the Appalachian coal area which produces approximately 70 per cent of the national bituminous coal tonnage. These associations join in presenting a Code of Fair Competition, this being a remarkable exhibition of co-operation among coal producers who have been engaged for a generation in bitter competitive operations. Other associations in various regions presented separate Codes as did certain groups of individual producers thus offered to the Administration the problem of harmonizing in some manner the divergent views represented in some twenty-eight different Codes.

This industry also presented the unique problem of one in which there was far-reaching organization of labor on an industrial basis, the United Mine Workers of America having contracts with many operators in many fields and claiming organization of workers in many other fields where no contractual relations existed.

The difficulty of reconciling all the conflicting elements in this situation can hardly be overemphasized. During the

progress of discussion following the public hearings representatives of the Appalachian Associations requested the aid of the Administration in facilitating the negotiation of a contract between these associations and the United Mine Workers of America, and it was evident to the Administration that this step having been taken a successful conclusion to these negotiations was of the utmost importance in bringing about the submission of a Code for the industry as a whole.

. . .

Respectfully submitted,

K. M. Simpson,
Deputy Administrator.

Approved:

Hugh S. Johnson,
Administrator.

. . .

September 18, 1933.

General Hugh S. Johnson,

Administrator, National Recovery Administration,
Washington, D. C.

Dear Sir:

I submit herewith my report on those aspects of the Bituminous Coal Industry which affected the formulation of the Code of Fair Competition for that Industry.

This report supplements my letter of transmittal of September 17, 1933.

Respectfully submitted,

K. M. Simpson,
Deputy Administrator.

P. 102:

SALIENT FACTS OF THE INDUSTRY

. . .

P. 103:

With the wage bill constituting 60-65 per cent of the total cost of production and wages practically the only flexible item in costs, the result has been that the burden of declining prices has fallen in greatest force on the wage earners. Thus, the coal industry was an economic "sore-spot" for at least five years before the collapse in 1929.

Not only did labor suffer during all this period but many mining operations were forced into receivership and reorganization and earnings were far from adequate on the investment in the industry. In 1929, a year of high production, corporations in the industry (as classified by the Bureau of Internal Revenue) reported a net loss of $11,300,000. The reported net loss for 1930 was $42,071,000. Similar data for other years are not available.

. . .

P. 203-04: President Lewis:

That is the policy of the United Mine Workers toward the adoption of the machine in industry. We think the machine will make possible greater wages, shorter working hours and improve conditions. There is no other modern solution to the machine problem of our present day and age than to increase the wages, shorten the working hours and shorten the working week to any degree necessary to let the machine do the work for mankind, but at the same time give to the workers in industry a wage produced by the machine that will maintain them and their families in comfort and with a provision for old age. I don't think that any other course of action is possible now.

. . .

EXHIBIT D126

PROCEEDINGS OF CONVENTIONS OF THE UNITED MINE WORKERS OF AMERICA

Year 1936

. . .

Joint Report of International Officers United Mine Workers of America

P. 17-18:

To the Officers and Delegates of the Thirty-fourth Constitutional Convention of the United Mine Workers of America:

GREETINGS:

The International officers, in compliance with their obligations, submit, herewith, a record of their stewardship:

WAGE AGREEMENTS

The National Industrial Recovery Act, passed by Congress in June 1933, became a law June 16 of the same year. The organization of the mine workers in the bituminous fields enabled the United Mine Workers of America to start its work of economic recovery in the bituminous industry on April 1, 1933, when wage levels were at their lowest in the Appalachian fields. There was no uniformity in wages. Motormen were paid rates varying from $3.50 per ten hour day to $1.50 per twelve hour day in Western Pennsylvania, with the same extreme variation in tonnage and other rates. These conditions, with reference to wages, prevailed throughout the entire Appalachian region. Of course, the absence of checkweighmen permitted wholesale robbery of the miners on an unprecedented scale, and thus reduced the earnings of tonnage workers to the lowest levels in the industry's history.

The operators, in an effort to thwart organization of their employees, attempted through their various agencies to establish uniform rates of pay. They also increased wages and conceded checkweighmen, but remained adamant in their refusal to recognize the United Mine Workers of

America until the first Appalachian Agreement was con
summated September 21 of that year.

It will thus be seen that the organization campaign in th
spring and summer of 1933 was responsible for elevatin
rates and establishing uniformity before the first agreemen
became effective in October of that year.

A conservative estimate of wage increases secured durin
the period between April 1, 1933, and October 1 of the sam
year for the Appalachian region would be about $1.50 pe
man per day for all day and tonnage workers, or a total fo
the six month period of approximately $58,000,000 for th
300,000 men employed in this territory. These figures ar
based upon a survey of the Appalachian area before an
during the campaign of organization in this territory.

The first Appalachian Agreement provided further in
creases of ten cents per ton on the combined cutting an
loading short wall machine rates, the establishment of
$4.60 base rate for skilled inside day wage men North of th
Ohio River, and a $4.20 base rate for skilled inside day wag
men in states South of the Ohio River. An increase of 1
per cent on all yardage and deadwork, the establishment
a uniform five-day week and eight-hour day, the privileg
of employing checkweighmen, and a termination date
March 31, 1934 were additional important components.

These increases affected 72 per cent of the national to
nage, and amounted, according to official estimates, to an in
crease of twenty-one cents per ton on labor cost on a pr
duction of 140,000,000 tons during that six month period,
$29,400,000.

The base rates of the Appalachian contract, together wit
the base rates of other wage agreements outside the App
lachian territory were then written into the bituminous co
code of fair competition.

This spectacular accomplishment on the part of th
United Mine Workers of America was hailed in governme
circles as the most praiseworthy achievement of the R

covery Administration in its effort to increase purchasing power through improvements in wage standards, and checkmated the destructive effects of a competitive system in bituminous coal that had brought ruin to investors and poverty to mine workers.

The realization of the industry's first code enabled the producers to move forward with a degree of confidence toward the setting up of properly correlated prices and better marketing arrangements. Despite serious obstacles and a wide-spread variance of opinion amongst many producers, the industry did make substantial headway in its effort to eliminate many of the unfair trade practices which heretofore existed.

The September 1933 wage agreement continued until March 31, 1934 when a new Appalachian contract was arrived at, establishing the seven hour day, $5.00 base rate for skilled inside day labor for states North of the Ohio River, and a base rate of $4.60 per day for skilled inside labor in the states South of the Ohio River. This agreement was to continue until March 31, 1935; however the several extensions arranged by the government of the United States, and acceded to by the United Mine Workers of America and the Appalachian coal operators, continued the agreement until October 1, 1935. Thus the agreement lasted for a period of eighteen months instead of one year. The seven hour day became universal in its application, and the newer base rates were again written into the bituminous coal code of fair competition.

The increase granted in the 1934 agreement increased the labor cost an additional sixteen cents per ton, although it was alleged by the Appalachian operators, due to the shortening of the work day, to amount to twenty-two cents per ton. However, to use the figure of sixteen cents and multiply it by the number of tons produced in the Appalachian region during the eighteen month period, or 385,000,000 tons, we find that the gross increase to labor as a result of the 1934 agreement amounted to $61,600,000.

. . .

P. 23:

The introduction of new machinery and other servicing devices by certain of the more well financed producing groups in the industry is creating a greater disparity in rates between those units and the remainder of the producers whose financial condition, or other circumstances, preclude the introduction of these newer devices at their operations.

. . .

EXHIBIT D129

PROCEEDINGS OF CONVENTIONS OF THE UNITED MINE WORKERS OF AMERICA

Year 1942

. . .

REPORT OF SCALE COMMITTEE—1942

Report of International Officers to the Thirty-Seventh Constitutional Convention, United Mine Workers of America

. . .

P. 87:

. . . A brief summary of fundamental achievements is as follows:

. . .

2. Elimination of the inequitable day-wage differential between Northern and Southern mines.

P. 460:

8. The Wage Scale Committee shall also propose and endeavor to secure the abolition of all discriminatory differentials in and between districts, and further endeavor to

adjust inequalities in rates of pay now existing between certain day wage classifications.

EXHIBIT D130

PROCEEDINGS OF CONVENTIONS OF THE UNITED MINE WORKERS OF AMERICA

Year 1944

. . .

PROPOSED CHANGES IN WAGES AND WORKING CONDITIONS

11. Other Provisions

Operators who are parties to this Agreement shall include clauses to protect the wage scales and conditions of employment whenever any of their mines are let to any corporation, company or individual for operating purposes. This obligation is to protect the contract and preserve the interest of the miners.

. . .

EXHIBIT D131

PROCEEDINGS OF CONVENTIONS OF THE UNITED MINE WORKERS OF AMERICA

. . .

P. 146:

Wage Proposals—United Mine Workers of America to National Joint Bituminous Coal Wage Conference Assembling Washington D. C., March 12, 1946

The undersigned have the honor to present the proposals of the United Mine Workers of America for incorporation in a new national bituminous wage agreement, to be effective as of April 1, 1946, as follows:

PROPOSALS

That a health and welfare fund for mine workers be created; adjustment of controversy affecting Supervisory, Technical and Clerical employes; increase of wages and reduction of daily and weekly working hours, affecting all classifications of inside and outside employes; adjustment of vacation, holiday and severance compensation; improved safety and compliance with mining, compensation and occupational disease laws; adjustment of intra-district and inter-district differentials and local inequalities affecting classification and compensation; elimination of inequities and abuses of existing fining and penalty provisions of basic and collateral agreements; amendment of rules and practices to promote mutual accord, increased efficiency and elimination of the small tyrannies of management; adjustment of controversy incident to unilateral interpretation of existing agreement by operators.

These proposals are submitted constructively and in good faith, and each and all of them are negotiable suggestions.

. . .

EXHIBIT D132

PROCEEDINGS OF CONVENTIONS OF THE UNITED MINE WORKERS OF AMERICA

Year 1948

. . .

P. 442:

Adjustment of intra-District and inter-District differentials.

Elimination of all inequities and abuses.

Adjustment of all matters incident to unilateral interpretations of existing Agreements, and consolidation of all benefits accruing from the present Agreements.

4. All resolutions submitted to this convention by Local Unions in the Bituminous Districts, covered by the National Bituminous Coal Wage Agreement, and which are not specifically covered by these proposals, shall be referred to the National Policy Committee; and in turn to the Negotiating Committee for consideration by the joint conference during the progress of negotiations with the clear understanding that every effort should be put forth for the elimination of abuses and correction of conditions as contemplated in such resolutions.

. . .

P. 447:

Companies are often negligent, management is often negligent when the expense of a breakdown or the operation of poor equipment falls upon the miner rather than upon the company. That is the job of management to keep that equipment in shape and to keep the various transportation processes of that mine in operation. However, it is impossible to make a national wage scale settlement that will fit the exact conditions at St. Michael or any other Local Union. The organization is trying to get a wage in this condition and it is a great boon to our people now and a boon to the members at St. Michael that before they load a car of coal they are in receipt of the daily allowance which now equals $4.05 per day. The differentials at St. Michael have not been widened by any settlement made by this organization. Whatever differentials existed there before the application of these across-the-board increases by the day, are still there. There may be some inequities there, but it will be the constant purpose of the organization to eliminate those inequities, and under this policy recommended to the convention by the Scale Committee, there is ample leeway and ample authority for the Negotiating Committee to secure every advantage that they can.

. . .

EXHIBIT D133

PROCEEDINGS OF CONVENTIONS OF THE UNITED MINE WORKERS OF AMERICA

Year 1952

. . .

P. 530-31:

Report of the Scale Committee

To the Forty-First Consecutive Constitutional Convention of the United Mine Workers of America, Washington, D. C.

Cincinnati, Ohio, October, 1952.

We, the members of your Scale Committee, have thoroughly reviewed all of the resolutions concerning wage scale matters in the Bituminous and Anthracite industries which have been transmitted to this convention, and the following recommendations are herewith respectfully submitted for your consideration:

Your committee, therefore, recommends when the National Policy Committee created by this convention takes appropriate action (in accordance with contractual provisions and at the propitious time to be decided upon by the aforesaid National Policy Committee) to institute negotiations for new National Bituminous Coal Wage and Anthracite Agreements, considerations shall be given to the following questions:

> Reduced hours; improved seniority, wages, working conditions, welfare and vacation pay; elimination of differentials, inequities and abuses; free explosives, blasting and safety equipment; pay for impurities, and compliance with workmen's compensation and occupational disease laws.

. . .

EXHIBIT D135

PROCEEDINGS OF CONVENTIONS OF THE UNITED MINE WORKERS OF AMERICA

Year 1960

. . .

P. 403-04:

Resolutions Relating to Scale and Contract

We, the members of the Scale Committee, considering the subject matter of resolutions relating to scale and contract negotiations, wish to submit the following for your consideration.

In view of the action of the previous Conventions relating to scale matters, which has proven very successful, a National Policy Committee shall again be established. This National Scale and Policy Committee will review all resolutions received and will also endeavor to incorporate the wage policies adopted by this Convention in future agreements for both the bituminous and anthracite industries and shall have the authority over all contractual negotiations and final consummation of joint wage agreements in our bituminous and our anthracite jurisdictions. In addition to the International Officers and the International Executive Board and executive officers of each District, the National Policy Committee members to be selected by the respective Districts which are as follows:

District 1—Five Committeemen
District 2—Four Committeemen
District 3—Two Committeemen
District 4—Three Committeemen
District 5—Four Committeemen
District 6—Four Committeemen
District 7—Four Committeemen
District 8—One Committeeman
District 9—Four Committeemen
District 10—One Committeeman
District 11—Two Committeemen
District 12—Four Committeemen
District 13—One Committeeman
District 14—One Committeeman
District 15—Two Committeemen
District 16—One Committeeman
District 17—Five Committeemen
District 19—Three Committeemen
District 20—Three Committeemen
District 21—Two Committeemen
District 22—Two Committeemen
District 23—Two Committeemen
District 27—One Committeeman
District 28—Two Committeemen
District 29—Four Committeemen
District 30—Three Committeemen
District 31—Three Committeemen

P. 407: . . .

DELEGATE KELLY, Local Union 6321, District 4: I would like to refer to Resolution No. S-756 on page 40. I would like to speak briefly on this resolution, as it has caused much concern in the Ronco local.

First I want to inform you that our mechanics in our mines—and I believe in all the U. S. Steel Corporation mines in District 4—are paid five cents less per hour than the master contract now calls for. We fully understand how this came about, but we would like for the present Scale Committee to try to have this changed in our next master contract.

When this particular case came before our local we were informed that nothing could be done as of now because of an agreement made in 1937.

So as not to take up all you delegates' time, I want to say in conclusion that our local now wishes to give this problem to our Scale Committee and to ask the Scale Committee to arrange to have one basic pay rate for all mechanics in our industry, and that this pay rate be the highest pay rate available under our contract terms. I thank you.

PRESIDENT KENNEDY: The Chairman will take notice, and I might say that it is the question of a uniform rate for mechanics in the industry, and we are for it.

. . .

PRESIDENT KENNEDY: Evidently the convention is calling for the question. Let's decide it in an orderly manner. All those in favor of the previous question will say aye; those opposed, no.

The motion to close debate has been carried.

Now the motion recurs upon the adoption of the Committee's report. I might say that every district will have men from the pits on the Scale and Policy Committee. They certainly can look after your rights.

The motion is to adopt the report of the Committee. Are you ready to vote? All in favor will give their consent by rising to their feet.

Those opposed will rise.

The motion is evidently carried by the unanimous vote of this convention.

. . .

EXHIBIT D375

REPORT ON THE WORK OF THE NATIONAL DEFENSE MEDIATION BOARD

March 19, 1941—January 12, 1942

. . .

It is clearly apparent that these figures which show the relative realization before and after the proposed wage increases do not afford sufficient justification for the maintenance of the 40-cent differential in the basic daily wage rate. The 3- to 3½-cent difference in labor costs that is involved in the 40 cents, although it is a real item in the labor cost, is not sufficient in itself to have any controlling effect on this competitive situation, or to justify a recommendation by the Mediation Board that the differential should be maintained in order to preserve existing fair competitive opportunities.

. . .

EXHIBIT NO. 438

The following information appears in Exhibit No. 438:

Name of Company	Manner in which UMW Contract Was Signed
West Kentucky Coal Company	Signed by Western Kentucky Coal Producers Association
Nashville Coal Company, Inc.	Signed by Western Kentucky Coal Producers Association
The Pittston Company Clinchfield Coal Company, Div. of	Signed by BCOA; Northern West Virginia Coal Assn.; Southern Coal Producers Association; Individual; Virginia Coal Operators Association; Winding Gulf Operators
The Pittston Company Amigo Smokeless Coal Company, Div. of	Signed by Individual; Smokeless Operators Association; BCOA; Winding Gulf Operators
Compass Coal Company (Affiliated with Clinchfield Coal Corp.)	Signed by BCOA; Northern West Virginia Operators Association
E. C. Minter Coal Company (Agent for Clinchfield Coal Corp.)	Signed by BCOA
Pittsburgh and Midway Coal Mining Company	Signed by Individual; S. W. Interstate Coal Operators Association; Western Kentucky Coal Producers Association; Ark-Okla. Coal Operators Association
Island Creek Coal Company	Signed by Individual Mbr. of SCPA; Logan Coal Opr. Association; Smokeless Oprs. Association; Big Sandy-Elkhorn Coal Operators Association; Pocahontas Operators Association
Consolidation Coal Company	Signed by Individual Mbr. of BCOA and Western Pa. Coal Operators' Association; Ohio Coal Association; Northern Panhandle of West Virginia Coal Operators' Association; Ohio Coal Association (BCOA); Illinois Coal Operators Association; Individual; SCPA; Smokeless Operators' Association; Northern West Virginia Coal Association